Office-Supreme Court, U.S.
FILED
FEB 20 1981
ALEXANDER L. STEVAS,
CLERK

80-1454

NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Petitioner,

v.

BRENDA ANN KRONSCHNABEL,

Respondent.

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Petitioner,

v.

NOEL ZEONA STONE, WARD HERBERT STONE, SEAFARERS INTERNATIONAL UNION, PACIFIC DISTRICT-PACIFIC MARITIME ASSOCIATION PENSION PLAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION OF CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA

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QUESTIONS PRESENTED

1. Whether section 514 of the Employee Retirement Income Income Security Act of 1974 (29 U.S.C. §§1001 et seq.) ("ERISA"), which preempts "all State laws insofar as they . . . relate to any employee benefit plan" preempts California laws and court orders which compel employee benefit plans to revise their terms, conditions and procedures so as to assume responsibility for monitoring, administering and enforcing California community property divisions of pension rights between plan participants and their non-participant ex-spouses.

2. Whether an ex-spouse who is neither a participating "employee" in, nor a designated beneficiary under, an employee benefit plan is entitled to sue the plan under ERISA sections 502(a)(1)(B) and 3(7) and (8), which authorize such suits only when brought by "employees" covered by the plan or their designated beneficiaries.

PARTIES TO THE PROCEEDINGS

PARTIES TO CASE NO. 78-2313, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:

Carpenters Pension Trust for Southern California	Petitioner/Intervening Appellant
Noel Zeona Stone	Respondent/Appellee/Plaintiff
Ward Herbert Stone	Respondent/Defendant
Seafarers International Union, Pacific District, Pacific Maritime Association Pension Plan	Respondent/Appellant/Defendant
Secretary of Labor, United States Department of Labor	*Amicus Curiae*
ERISA Industry Committee (ERIC)	*Amicus Curiae*
Gray Panthers	*Amicus Curiae*
Equal Rights Advocates, Inc. and The Women's Legal Defense Fund	*Amici Curiae*

PARTIES TO CASE NO. 79-3032, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:

Carpenters Pension Trust for Southern California	Petitioner/Appellant/Plaintiff
Brenda Ann Kronschnabel	Respondent/Appellee/Defendant
Daniel Jerome Kronschnabel	Defaulting Defendant
Geraldine Lee Tirre	Defaulting Defendant
Joaquin Alonzo Tirre	Defaulting Defendant

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION OF CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA

Petitioner Carpenters Pension Trust for Southern California respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in these proceedings on September 29, 1980.

STATEMENT OF JURISDICTION

The opinions of the Court of Appeals for the Ninth Circuit were entered in *Stone v. Stone,* Case No. 78-2313, and in *Carpenters Pension Trust for Southern California v. Kronschnabel,* Case No. 79-3032, on September 29, 1980.

The court of appeals denied petitioner's timely petition for rehearing in each case, by order entered on November 24, 1980 (reproduced in Appendix E and Appendix F, respectively).

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution:

Article VI, Clause 2

[Reproduced in Appendix G.]

United States Code, Title 26:

§ 219	[ERISA § 2002]
§ 402(e)	[ERISA § 2005]
§ 408	[ERISA § 2002]

[Reproduced in Appendix H.]

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§ 1144. *Other Laws.* [ERISA § 514]

§ 1222. [*Joint Pension Task Force;*] *Duties.* [ERISA § 3022]

[Reproduced at Appendix I.]

California Civil Code:

§ 5106.

[Reproduced at Appendix J.]

STATEMENT OF CASE

This petition concerns Case No. 78-2313, the "*Stone*" case, and Case No. 79-3032, the "*Kronschnabel*" case.

Petitioner, Carpenters Pension Trust for Southern California (the "Trust") was the appellant in *Kronschnabel* and, upon motion, was granted status as intervenor-appellant in *Stone*. Other parties to the *Stone* proceedings were *amici curiae* Secretary of Labor, United States Department of Labor, ERISA Industry Committee, The Women's Legal Defense Fund, Equal Rights Advocates, Inc. and the Gray Panthers.

On August 18, 1980, *Stone* and *Kronschnabel* were consolidated for all purposes by order of the court of appeals.

On September 29, 1980, the court of appeals affirmed the decisions of the district courts below in *Stone* and *Kronschnabel,* on the ground that any contrary holding was precluded by the summary action of this Court in *In re Marriage of Campa,* 89 Cal. App. 3rd 113, 152 Cal. Rptr. 362, (1979), *appeal dismissed* 444 U.S. 1028, 100 S. Ct. 696 (1980) ("*Campa*").

This petition follows because of the impact of the *Stone, Kronschnabel* and *Campa* decisions upon more than 7,000 employee benefit plans throughout the United States and because of the significance of the federal questions presented herein.

CASE NO. 78-2313, STONE v. STONE

In 1974, the California Superior Court for the County of Alameda awarded respondent Noel Stone ("Noel") a $170 per month interest in the $425 per month pension of her ex-husband, respondent Ward Stone ("Ward"). Ward failed to abide by the court's award.

In 1977, Noel filed suit in the superior court against Ward and his pension plan, respondent Seafarers International Union, Pacific District—Pacific Maritime Association Pension

Plan ("Seafarers Plan"). Noel requested the Seafarers Plan be compelled to pay Noel's $170 per month interest directly to her by separate monthly checks.

The Seafarers Plan, an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.) ("ERISA"), removed Noel's action to federal district court. Noel did not object. Ward never appeared.

The Seafarers Plan contended Noel's action and her requested relief was precluded by the provisions of ERISA including section 514 [29 U.S.C. §1144] which expressly preempts "any and all state laws insofar as they . . . relate to any employee benefit plan." Ruling upon cross-motions for summary judgment, the district court rejected these contentions and enforced California law, ordering the Seafarers Plan to divide Ward's pension and commence direct monthly payments to Noel to satisfy her community interest in the Plan. Noel's claims against Ward were remanded to the superior court.

In ruling against the Seafarers Plan, the district court found that, although ERISA section 502(a)(1)(B) [29 U.S.C. §1132(a)(1)(B)] limits suits for pension benefits to those brought by "participants" (defined in ERISA section 3(7) [29 U.S.C. §1003(7)] to be "employees" participating in plans), Noel nevertheless acquired the status of participant [employee] from Ward by operation of California law. Jurisdiction under section 502 thus established, the court held the order sought by Noel unpreempted by section 514 essentially because Congress did not clearly intend that ERISA abrogate state "community property laws."[1]

The Court of Appeals for the Ninth Circuit affirmed the district court's decision.

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[1] The same district court, another judge presiding, contemporaneously held to the contrary finding that ERISA section 514 *did preempt* the type of orders sought by Noel and that a litigant in Noel's position was not a participant for purposes of ERISA section 502(a)(1)(B). *Francis v. United Technologies Corp.*, 458 F. Supp. 84 (N.D. Cal. 1978).

CASE NO. 79-3032, CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA V. KRONSCHNABEL

In 1976, the Trust sued Brenda Kronschnabel, Daniel Kronschnabel, Geraldine Tirre and Joaquin Tirre in federal district court for declaratory relief regarding ERISA's preemption of California law. Suit was brought under ERISA sections 502(a)(3)(B)(ii), (d) and (e). 29 U.S.C. §1132(a)(3)(B)(ii), (d) and (e).

The Trust, like the Seafarers Plan, is an employee benefit plan governed by ERISA. It has approximately 47,500 plan participants, approximately 11,000 of whom receive monthly benefit checks.

Daniel Kronschnabel and Joaquin Tirre are two of these plan participants. Unlike Ward Stone, neither yet receives a monthly pension benefit.

Suit was filed when Brenda Kronschnabel and Geraldine Tirre served upon the Trust copies of their California superior court judgments of dissolution which respectively awarded them interests in Daniel Kronschnabel's and Joaquin Tirre's pension rights in the Trust. The Kronschnabel order contained an admonishment that its service upon the Trust under California Civil Code section 5106 would put the Trust "at peril" if, upon Daniel Kronschnabel's subsequent retirement, it issued pension benefits to Daniel without considering Brenda Kronschnabel's community interest therein. The Tirre order noted that jurisdiction was retained to join the trustees of the Trust for purposes of enforcing the rights of Geraldine Tirre *and "her heirs or devisees"* to one-half of Joaquin Tirre's community pension rights in the Trust.

The Trust moved for summary judgment. Brenda Kronschnabel moved to dismiss. The remaining parties defaulted.

Pertinent to this appeal, the Trust contended the superior court orders were void under ERISA section 514 insofar as they "related to" the Trust and that the orders indeed related to the

Trust (1) by imposing obligations on the Trust to monitor, administer and, ultimately, enforce the state law rights of Brenda Kronschnabel and Geraldine Tirre (or Geraldine's heirs or devisees) and (2) by imposing ultimate liability on the Trust should it fail to enforce these state law rights of the nonemployee ex-spouses. In support of its motion and contentions, the Trust submitted evidence that compliance with court orders such as those in the Kronschnabel and Tirre cases would necessitate alterations to the terms and conditions of the Trust, would complicate Trust administration, would double the time required to process a pension claim, and would increase the administrative expenses of the Trust by approximately $8,000 per month.

On October 31, 1978, the district court denied the Trust's motion and found for defendants, dismissing the complaint.[2]

The Court of Appeals for the Ninth Circuit affirmed the district court's decision on the ground that this Court's summary action in *Campa* precluded any contrary holding.

REASONS FOR GRANTING THE WRIT

A. THE DECISIONS BELOW PRESENT AN IMPORTANT QUESTION OF FEDERAL SUPREMACY OVER STATE LAW WHICH DESERVES, BUT HAS YET TO RECEIVE, PLENARY CONSIDERATION BY THIS COURT.

This petition presents an important question of the scope of ERISA preemption of state law. Plenary consideration of this question is of vital importance to more than 7,000 employee benefit plans throughout this country. Congress, in enacting the comprehensive federal regulatory scheme of ERISA, *expressly exempted* employee benefit plans from any and all state laws insofar as those laws "*relate to*" employee benefit plans.

[2] The court's reported decision in *Kronschnabel* also applies to a consolidated declaratory relief action, *Carpenters Pension Trust for Southern California v. Yacawych*, No. CV 76-3997-WMB (C.D.Cal. 1978). While on appeal this second case was settled and dismissed.

ERISA §514 (29 U.S.C. §1144). The courts below have gutted this express preemption by validating California laws compelling employee benefit plans to administer for California courts the division of pension rights between a plan's participants and their ex-spouses.

This Court has yet to accord full consideration to this question of the scope of section 514. Similar issues in earlier cases have received summary consideration at most. *In re Marriage of Campa,* 444 U.S. 1028, 100 S. Ct. 696 (1980) (appeal dismissed for want of a substantial federal question); *Retirement Fund Trust v. Johns,* 444 U.S. 1028, 100 S. Ct. 696 (1980) (appeal dismissed for lack of jurisdiction and certiorari denied).

Petitioner submits that the question as now presented is a substantial federal question deserving plenary consideration and that such consideration will disclose that the state court in *Campa* and the courts below have misconstrued and impermissibly narrowed the scope of ERISA's preemption of state law. These decisions have enmeshed employee benefit plans in a net of state-law-imposed obligations in California and necessarily threaten similar consequences in each of the remaining states of this nation, a result completely inimical to the express intent of Congress in enacting ERISA section 514.[3]

B. THE DECISIONS BELOW CONTRAVENE EXPRESS CONGRESSIONAL INTENT TO INSULATE EMPLOYEE BENEFIT PLANS FROM STATE LAWS RELATING TO THEM.

The courts below and the state court in *Campa* go to great lengths to determine that Congress did not intend for section 514 to apply to the California laws in question even if such laws

[3] Full consideration of the question at this time is especially appropriate in light of the Court's pending review of the scope of ERISA preemption in another context, that of workers' compensation offsets. *Buczynski v. The General Motors Corporation, cert. granted,* 49 U.S.L.W. 3332, (No. 80-193, 1979 Term).

"relate to" employee benefit plans. Petitioner submits these findings seriously misconstrue and impermissibly narrow the intended breadth of section 514.

1. Congress Intended to Preempt All State Laws Relating to ERISA-Regulated Employee Benefit Plans and to Preclude the Judiciary From Narrowing the Breadth of This Preemption.

a. Section 514's Preemption of State Law is Plainly-Worded and Is Virtually Total.

The extreme breadth of federal preemption intended by Congress in enacting ERISA is manifest in the language of section 514. Section 514(a) provides, in pertinent part,:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter *shall supersede any and all State laws insofar as they . . . relate to any employee benefit plan . . . .*

29 U.S.C. §1144(a) (emphasis added).

Section 514(c) emphasizes the all-inclusiveness of this preemption:

> For purposes of this section:
>
> (1) The term "State law" includes all laws, *decisions,* rules, regulations, or other State action having the effect of law, of any State . . . .
>
> * * *

29 U.S.C. §1144(c) (emphasis added).

Section 514(b) expressly enumerates the *only* categories of State laws saved from the otherwise total preemption of section 514(a). These enumerated exceptions in no way protect the

California laws in question. Indeed, subsection (4) of section 514(b) further evidences the pervasiveness of the provision's basic preemption by providing:

> Subsection (a) of this section shall not apply to any generally applicable *criminal* law of a State.

29 U.S.C. §1144(b)(4) (emphasis added).

b. *Congress Intended Section 514's Total Preemption To Be Given Full Effect By the Judiciary.*

The legislative history of ERISA establishes that Congress intended the exceptional preemptive sweep evoked by the "plain words" of section 514 to be given full effect. Rejecting narrower formulations of preemption, Congress adopted section 514 with the express intent of foreclosing "endless litigation" over the "perimeters of preemption." 120 Cong. Rec. S15751 (August 22, 1974) (remarks of Senator Javits, sponsor), *reprinted in* Legislative History of the Employee Retirement Income Security Act of 1974, Committee Print, 94th Cong., 2d Sess. 4770-71 (1976) (hereinafter "*Legislative History*").

Congress was cognizant of the potential consequences inherent in its foreclosing litigation over the scope of section 514. It recognized that its abrogation of the judiciary's power to define preemption on a case-by-case basis could result in unanticipated distortions. 120 Cong. Rec. S29942, (August 22, 1974) (remarks of Sen. Javits, sponsor); *Legislative History* at 4771.

Accordingly, Congress provided a safety valve, a forum for consideration of such cases. That forum was not the courts, however; *it was Congress itself.* In section 3022 of ERISA, Congress instructed the Joint Pension Task Force to monitor the effects and continuing desirability of its broad federal preemption of state laws relating to plans and to report the findings back to Congress for review and possible action. ERISA §3022(a)(4)(29 U.S.C. §1222(a)(4)).

The legislative history thus confirms that Congress intended the plain meaning of section 514 to be given absolute effect.

c. *Congress Mandated Total Preemption In Section 514 to Save Employee Benefit Plans From All State-Imposed Administrative Burdens.*

The courts below and the state court in *Campa* have refused to believe that Congress actually meant what it said in section 514. They refuse to find any Congressional motive for preempting the California laws and court orders in question.

Petitioner submits this judicial reluctance to enforce the plain meaning of section 514 violates the express Congressional intent to foreclose endless litigation over section 514 and to prohibit judicial recasting of the perimeters of preemption.

Petitioner further submits the courts err in finding no motive. An express Congressional motive does exist for preempting the laws in question. It resides in Congressional concern over the impact which ERISA's enactment would have upon employee benefit plans.

In enacting ERISA, Congress burdened employee benefit plans with complicated and costly administrative and structural requirements regarding participation, vesting, funding, disclosure and fiduciary responsibility for the purpose of protecting plan participants. At the same time Congress acknowledged that employee benefit plans were voluntary and that ERISA had to be tailored *wherever possible* to reduce the burdens upon the plans as plans.

Congress expressly noted that disregard of this latter reality could produce an anomalous result. The statute designed to protect plan participants could prompt termination of the very plans in which they participate — in legislating the laying of golden eggs, Congress could kill the goose. *See* S. Rep. No. 383, 93d Cong., 2d Sess. 18-19 (1973); *Legislative History* at 1086-87.

Thus, whatever motive requirement is imported into statutory analysis by the courts below and the state court in *Campa,* this Congressional concern should manifestly satisfy it. State laws were one of the areas where Congress deemed it possible to reduce administrative burdens on employee benefit plans as plans. Having formulated a complete scheme for controlling the birth, life and death of employee benefit plans, Congress insulated the plans from all state laws relating to them. Congress then reserved to itself the sole authority and responsibility for reconsidering the wisdom of this preemption.

The Congressional mandate to the judiciary is thus clear in language, in legislative history and in motive. Until further notice from Congress, ERISA's preemption of state law is inviolate. To the extent California's laws and orders relate to employee benefit plans, they are preempted.

Unfortunately for employee benefit plans, the courts below (and courts throughout the nation) have been less than sensitive to this mandate.

2. The Decisions Below Improperly Invade the Congressionally-Delineated Perimeters of Preemption by Holding Unpreempted California Laws Which Relate to Employee Benefit Plans.

The courts below and the state court in *Campa* do not simply consider whether California's laws in question "relate to" employee benefit plans. Rather, each goes to great lengths to find Congress could not have intended that section 514 be read literally with respect to California's laws. In so doing, each court commits three fundamental errors. First, the courts assume that, because Congress did not mention "domestic relations laws" by name in section 514, it did not intend that the provision apply to the California laws in question. Second, the courts assume that the laws in question are "domestic relations" laws. Third, the courts conclude that the laws in question do not actually "relate to" employee benefit plans.

a. ***The Decisions Below Err In Excluding Domestic Relations Laws From Preemption.***

The courts below and the state court in *Campa* first err in holding domestic relations laws unpreempted. This error stems from overreliance on the premise that:

> "Domestic relations is a field peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." [*Citing Beuchold v. Ortiz,* 401 F.2d 371, 373 (9th Cir. 1968) (diversity jurisdiction unavailable in matters of parental custody)].

Campa, 89 Cal. App. 3d at 124; *Kronschnabel,* App. D at D-9; *Stone,* App. C at C-10.

From this premise, each court concludes that §514 does not preempt California's domestic relations laws because it does not "clearly and unmistakably" reference such laws. *Campa,* 89 Cal. App. 3d at 124; *Kronschnabel,* App. D at D-10; *Stone,* App C at C-26.

The error of these conclusions is virtually self-evident. Certainly, this Court has never interpreted the Supremacy Clause [U. S. CONST., art. VI, cl. 2] as requiring Congress to attach to the end of every federal preemption provision a disclosure statement: "and this means domestic relations laws, too." This Court has only required that Congress "clearly" ordain its preemption. *See, e.g., Malone v. White Motor Corporation,* 435 U.S. 497, 98 S. Ct. 1185 (1978); *Ray v. Atlantic Richfield Co.,* 435 U.S. 151, 98 S. Ct. 988 (1978); *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 142, 83 S. Ct. 1210 (1963).

In section 514, Congress clearly ordained preemption of *all* state laws *relating to* employee benefit plans. The only exceptions to this preemptive sweep are those state laws listed

in the enumerated exceptions of section 514(b). Generally applicable criminal laws find refuge there. State domestic relations laws do not. ERISA §514(b)(4) (29 U.S.C. §1144(b)(4)).[4]

What reason would Congress have to preempt domestic relations laws in section 514? The answer lies partially in the fact that "domestic relations laws" do not normally "relate to" employee benefit plans as plans. Employee benefit plans are essentially untouched by state law treatment of marital and family relations. Therefore, domestic relations laws are essentially unpreempted. Only insofar as such laws actually relate to employee benefit plans, as plans, does preemption apply. Thus, Congress could preempt such laws without concern. Preemption of domestic relations laws insofar as they relate to employee benefit plans has no effect on the vast body of such laws.

b. ***The Decisions Below Err in Characterizing the Laws in Question as Domestic Relation Laws.***

The second error of the courts below and of the state court in *Campa* is even more fundamental. It lies in their characterization of the laws in question as "domestic relations laws." California's laws are not the laws of "domestic relations" so often heralded as being "peculiarly suited to state . . . control." They do not define marital or familial relations. The laws in question are nothing more than third-party laws of enforcement. They are laws of judicial convenience. With these laws,

---

[4] The state court in *Campa* makes much of the fact that, whereas Congress was explicit in preempting state community property laws in sections 2002 and 2005 of ERISA (amending certain Internal Revenue Code provisions, 26 U.S.C. §219, 402(e) and 408), Congress made no specific mention of community property law preemption in section 514. *Campa* at 126. This point misperceives the structure of ERISA. Section 514 by its terms is applicable only to Titles I and IV of ERISA. (Subchapters I and III as codified, 29 U.S.C. §§1001, et seq.) Sections 2002 and 2005 appear in Title II of ERISA. Title II does not contain a broad preemptive clause. Thus, to preempt community property laws in Title II, Congress had to specifically so state. Titles I and IV of ERISA did not require this specific preemption because of the absolute breadth of section 514.

California courts are attempting to unburden themselves conveniently — to devolve to employee benefit plans the state judiciary's administrative duty to oversee enforcement of state laws. In effect, California courts are converting employee benefit plans into trustees for the courts, assigned to monitor, implement and enforce the terms of state court judgments.

Preemption of these laws of enforcement does not alter the domestic relations laws of California. Marital property in California continues to be subject to judicial division in the same manner as before section 514 was enacted. Only the subsequent judicial tools of enforcement are reduced in number.

Thus, the real question before this Court is not whether section 514 preempts state domestic relations laws, but whether it prohibits state courts from conveniently delegating certain of their responsibilities to employee benefit plans.

c. ***The Decisions Below Err in Finding the Laws in Question Do Not Impermissibly "Relate To" Employee Benefit Plans.***

The test of preemption in section 514 is manifestly simple — do the state laws involved impermissibly "relate to" employee benefit plans as plans.

Petitioner submits that, in their answer to this query, the courts below and the state court in *Campa* commit their third fundamental error. The courts address this question cavalierly, asserting that California's laws impose minimal burdens upon plans, burdens which consist, essentially, of the issuance of two checks instead of one. Eg. *Campa,* 89 Cal. App. 3d at 131.

Such a characterization is conveniently but defectively myopic. It perceives the nose under the tent but not the camel outside. If the laws in question impacted only upon a plan's

check-writing machine, this petition would never have been written, nor would plan administrators throughout California and this nation have contested California's laws so vehemently or for so long in countless federal and state, trial and appellate cases.

In truth, if employee benefit plans are to comply with the California orders in question, they must significantly alter their administrative procedures and their terms and conditions for providing benefits.

First, in order to issue two checks in appropriate percentages ordered by the courts, plans must establish record-keeping systems for long-term storage and retrieval of court orders entered with respect to particular plan participants.

These systems must contain sufficient flexibility and capacity to store and process orders entered in the early stages of plan participation. Some orders may issue as much as 40 years before retirement.

The systems must also be capable of storing and processing multiple court orders respecting a particular plan participant. Inevitably, some plan participants will cycle through the matrimonial state more than once. Plan systems must be able to handle the multiple court orders which may result.

Second, in order to implement court orders, plans must establish additional record-keeping systems for storage, updating, and retrieval of information concerning the whereabouts of non-participant ex-spouses. As with records of court orders, these records must contain sufficient flexibility to allow for the long-term maintenance of location records on more than one ex-spouse per plan participant.

Third, plans must establish procedures for ascertaining the existence of court orders at the time a participant applies for retirement and for providing notification to nonparticipant ex-spouses of this application.

Fourth, plans must acquire the capability to, and must establish procedures for, properly computing the dollar value of a non-participant ex-spouse's court-ordered partial interest in the monthly benefits to which a plan participant ultimately becomes entitled. The courts usually do not know at the time of dissolution the quantum of pension rights which a given participant may acquire by the time of retirement. They only know what rights have been earned to the time of dissolution. Thus, the interests divided by the courts are not reflective of the total participant interest by the time of retirement. At retirement, it will be the plans that must ascertain the total pension rights accrued and compare these with the orders. Only from this comparison can the final dollar pension interests of the plan participants and of non-participants be calculated.[5]

Fifth, plans must develop procedures and the data storage and processing capacities necessary to divide the monthly benefits of plan participants according to the foregoing computations and to issue properly checks representing each portion directly to the plan participant or non-participant ex-spouse entitled thereto.

Sixth, plans must establish procedures to administer court orders restricting the freedom of plan participants to designate beneficiaries and to select options normally available under ERISA. For example, court orders such as the Tirre order in *Kronschnabel* will issue deeming an ex-spouse's interest devisable or inheritable. Other court orders will impose restrictions on a plan participant's right to select a joint and survivor annuity (a reduced pension benefit payable over the joint lives of the participant and the non-participant spouse, an option required by ERISA section 205 [29 U.S.C §1105] which protects the participant's current spouse but which reduces the monetary benefit to the ex-spouse). *See In re Marriage of*

[5] Again, these procedures must be applicable to instances where more than one ex-spouse is entitled to a portion of the plan participant's monthly benefit.

Lionberger, 97 Cal. App. 3d 56, 158 Cal. Rptr. 535 (1978) (order precluding a plan from honoring participant's election to receive joint and survivor annuity is valid and not preempted by ERISA), *cert. denied*, ___ U.S. ___, 100 S. Ct. 2917 (1980). Sooner or later, still other U.S. court orders will compel a plan to deem a participant involuntarily retired for purposes of forcing plan commencement of benefit payments to an ex-spouse. This type of order may occur at or after the normal retirement date or even before — resulting in an involuntary "early retirement" (at a reduced benefit level). *See In re Marriage of Gillmore*, 113 Cal.App. 3d 319, 169 Cal. Rptr. 811 (1980) (50-year old participant not ready to retire ordered to commence payments to ex-spouse of her share of "early retirement" pension benefits).[6]

The net effect of California's laws on employee benefit plans — the degree to which they *relate to* plans — simply cannot be dismissed. Far from merely requiring the issuance of two checks, California's laws and court orders impose complex and long-term administrative obligations on every employee benefit plan with the misfortune of having California participants. Every alleged mistake in administering these laws — an overlooked five- or ten- or twenty-year old court order or a misread or misinterpreted state court restriction on a participant's ERISA-provided benefit election — will expose a plan to legal expense and potential liability for benefits diverted to the wrong party.

In short, California's laws do indeed "relate to" employee benefit plans. To hold otherwise is to ignore the obvious.

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[6] While this court order does not compel participant's pension plan to make payments in advance of the participant's actual retirement, the trend is plain and ominous. It is merely a matter of time before a state court attempts to compel an employee benefit plan to enforce such an order, an order which would contravene the terms and procedures of every employee benefit plan governed by ERISA.

C. THE DECISIONS BELOW INVITE INDIVIDUAL JUDGES AND LEGISLATURES IN EACH OF THE FIFTY STATES TO DELEGATE TO EMPLOYEE BENEFIT PLANS THE STATES' RESPONSIBILITIES TO MONITOR, ADMINISTER AND ENFORCE STATE LAWS — A RESULT IN DIRECT CONFLICT WITH THE LANGUAGE, LEGISLATIVE HISTORY AND INTENT OF ERISA.

The inevitable consequences of the decisions below and in *Campa* extend far beyond the perimeters of California law. The validation of California's laws and court orders delegating to employee benefit plans the judiciary's obligations to oversee and enforce California's community property divisions of pension rights is an open invitation. If California is allowed to co-opt the administrative machinery of employee benefit plans, so may the legislatures and judges of every other state in this nation.

The decisions in question place no limits upon the state laws and orders which may be employed. The only limitations on the laws and orders devised will be the particular legislature's or judge's powers of discretion and creativity.

Human nature and judicial economy dictate that a single element will be common in each of these laws and orders. That element will be the shifting from the courts to the plans of as much responsibility and liability as possible.

The effects of this inevitable process upon the thousands of employee benefit plans in this country will be immense. Employee benefit plans cannot divine today the systems they will need for administering the orders of tomorrow. Such systems will have to be continually modified, reprogrammed and adapted to meet the demands that will arise on a case-by-case and state-by-state basis.

Further, employee benefit plans will repeatedly have to address the Hobson's choice of how to respond to an order which the plan believes violates ERISA or applicable state

laws. Should the plan acquiesce, a participant may later have an action against the plan for the benefits lost as a consequence of the plan's compliance with an unlawful order. Should the plan contest the order, legal expense will be incurred which will almost certainly be disproportionate to the monetary value of the benefits involved in the particular case. Moreover, should the plan lose, it is likely to incur also the attorneys' fees of an ex-spouse.[7]

Finally, plans will have to incur ongoing legal expense for purposes of monitoring the laws of every state which issues orders against the plans and the terms of every order issued to be certain that the plan satisfies its legal obligations under the laws of the states involved. This imports a new cost element into plan administration which is wholly unnecessary in normal pension claims processing procedures.

Petitioner submits that these consequences which will necessarily occur in state after state are precisely the type of state law interference with employee benefit plan administration which Congress sought to preempt in section 514 of ERISA.

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[7] The Tirre court order in *Kronschnabel* exemplifies this dilemma. The Tirre order requires the Trust to consider the pension rights of Joaquin Tirre as being partially owned by Geraldine Tirre *and her heirs or devisees.* The *Lionberger* decision, *supra,* holds such an order has long been inappropriate under California law. At issue in the Tirre order is a minor monetary sum. Yet, the Trust must either incur legal expense to monitor, uncover and resolve this type of inconsistency on a case-by-case (and state-by-state) basis, or the Trust must blindly accede to what may be patently unlawful orders under the laws of the applicable state.

D. CONCLUSION.

For the foregoing reasons, petitioner Carpenters Pension Trust for Southern California urges this Court to issue the requested Writ of Certiorari and to accord plenary consideration to the questions here presented.

Respectfully submitted,

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APPENDICES

APPENDIX A

No. 78-2313.

United States Court of Appeals,
NINTH CIRCUIT

NOEL ZEONA STONE,

Plaintiff-Appellee,

v.

WARD HERBERT STONE,

Defendant,

AND

SEAFARERS INTERNATIONAL UNION, PACIFIC DISTRICT, PACIFIC MARITIME ASSOCIATION PENSION PLAN,

Defendant-Appellant,

AND

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Intervenor-Appellant.

Argued July 9, 1980.
Submitted July 23, 1980.
Decided Sept. 29, 1980.
Rehearing Denied Nov. 24, 1980.

Appeal from the United States District Court for the Northern District of California.

Before WRIGHT, GOODWIN and WALLACE, Circuit Judges.

WALLACE, Circuit Judge:

Seafarers International Union, Pacific District-Pacific Maritime Association Pension Plan (the Plan) appeals from the district court's grant of summary judgment in favor of Noel Zeona Stone (Noel). *Stone v. Stone,* 450 F.Supp. 919 (N.D.Cal.1978). On the merits, the case presents the question whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001, *et seq.,* preempts California community property laws insofar as they require ERISA-regulated employee benefit plans to pay part of a participant's benefits directly to his or her divorced spouse. Also raised is the question whether the district court has jurisdiction over Noel's claim. We affirm.

I

In 1973, Noel instituted dissolution proceedings against her husband, Ward Herbert Stone (Ward), in the California Superior Court for the County of Alameda. On September 25, 1974, that court entered an interlocutory judgment dissolving the marriage. In its interlocutory order, the court ruled that one of the Stones' community assets was a $425 monthly pension pursuant to which the Plan has made payments to Ward since his retirement in 1970. The superior court awarded to Noel a 40% interest in these monthly payments. On October 17, 1974, the court entered a final judgment of dissolution, incorporating the provisions of the interlocutory decree.

From October 1974 to May 3, 1977, Ward failed to comply with the terms of the decree. In particular, he failed to pay to Noel her share of his monthly pension benefits. Noel tried unsuccessfully to join the Plan to her dissolution suit by moving in 1976 to modify the final judgment.

On May 3, 1977, Noel filed suit in the California Superior Court for the County of Alameda against both Ward and the Plan. She alleged that she was the "owner" of 40% of Ward's

share in the fund operated by the Plan, and that Ward and the Plan were converting her property each and every month for the use of Ward. Noel sought an order requiring the Plan to pay 40% of Ward's monthly pension benefits directly to her. The Plan petitioned for removal of Noel's civil action to the district court. Noel did not move to remand the action to state court, and has not otherwise objected to removal. Ward did not appear. Ward has left the country, lives in Mexico, is beyond the reach of state court process, and has no property to be levied upon.

The parties stipulated to the facts for purposes of cross-motions for summary judgment. The issue presented in these motions was whether ERISA preempts a state court from ordering an ERISA-regulated pension plan to pay a plan participant's pension benefits directly to his or her ex-spouse. After determining that it had jurisdiction, the district court held that ERISA does not preempt such state-court orders. Accordingly, the district court granted Noel's motion for summary judgment against the Plan. The district court also held that it lacked pendent jurisdiction over Noel's claim against Ward, and that even if pendent jurisdiction were present, it would be an abuse of discretion to exercise it. Hence, the district court remanded the state claim against Ward to state court.

II

The district court's ruling on the merits was clearly correct. As our decision in *Carpenters Pension Trust v. Kronschnabel,* 632 F.2d 745 No. 79-3032 (9th Cir. September 29, 1980), demonstrates, the Supreme Court's summary dismissal of the appeal in *In re Marriage of Campa,* 444 U.S. 1028, 100 S.Ct. 696, 62 L.Ed.2d 664 (1980) (Campa), binds district and circuit courts to the view that ERISA does not preempt state-court orders requiring a pension plan to pay a community property share of a plan participant's monthly benefit payments directly to his or her ex-spouse. The sole question presented by the

instant appeal, therefore, is whether the district court properly exercised jurisdiction to reach the merits in this case.

III

As indicated above, Noel did not object to the Plan's removal of the entire case to the district court. It is well-established that where after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court. *Grubbs v. General Elec. Credit Corp.*, 405 U.S. 699, 702, 92 S.Ct. 1344, 1347, 31 L.Ed.2d 612 (1972). We have held that the *Grubbs* rule is applicable when the merits are reached and determined on a motion for summary judgment. *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (per curiam); *Sheeran v. General Elec. Co.*, 593 F.2d 93, 98 (9th Cir.), *cert. denied*, 444 U.S. 868, 100 S.Ct. 143, 62 L.Ed.2d 93 (1979). *See also Farina v. Mission Investment Trust*, 615 F.2d 1068, 1074 & n.16 (5th Cir. 1980). *But cf. Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1066 (9th Cir. 1979) (*Grubbs* rule inapplicable when only partial summary judgment is rendered on the factual issues before the court). Thus, our jurisdictional inquiry is confined to the question whether the district court would have had jurisdiction over this action had it been filed originally in district court.[1]

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[1] It is unnecessary, therefore, for us to reach the question which would otherwise be presented here: whether this case was properly removed pursuant to 28 U.S.C. 1441. *Compare Stone v. Stone*, 450 F.Supp. 919, 923 (N.D. Cal.1978), *with In re Marriage of Pardee*, 408 F.Supp. 666, 667-69 (C.D.Cal.1976). The different results in *Stone* and *Pardee* reflect the apparent tensions between 28 U.S.C. §§1441(a) and (b), on one hand, and section 1441(c) on the other. See generally C. Wright, Law of Federal Courts 39, at 158-59 (3d ed. 1976); Cohen, *Problems in the Removal of a "Separate and Independent Claim or Cause of Action"*, 46 Minn.L.Rev. 1, 25-34 (1961); Note, *Removal under Section 1441(c) of the Judicial Code*, 52 Col.L.Rev. 101, 109-12 (1952).

The district court held that it would have had original jurisdiction over Noel's suit against the Plan pursuant to ERISA §§502(a)(1)(B) and 502(e)(1), 29 U.S.C. §§1132(a)(1)(B) and 1132(e)(1). Section 502(a)(1)(B) provides that a "participant" in an ERISA-regulated pension plan may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." Section 502(e)(1) provides that state and federal district courts shall have concurrent jurisdiction of actions brought under section 502(a)(1)(B). The district court found that Noel, by virtue of her interest in Ward's benefits, qualified as a "participant" within the meaning of section 502(a)(1)(B).

At first blush, Noel would not seem to qualify as a "participant," as that term is statutorily defined in ERISA §§3(7), 29 U.S.C. §§1002(7).[2] Noel is not an "employee" of an employer served by the Plan and thus would not appear to be a participant. Thus in *Kerbow v. Kerbow,* 421 F.Supp. 1253 (N.D.Tex. 1976), a district court held that a non-employee ex-spouse lacks standing to sue under section 502(a)(1)(B). It further found that, because ERISA is generally preemptive, ex-spouses who do not qualify under section 502(a)(1)(B) may not bring any civil action—state or federal—against an ERISA-regulated pension plan to enforce a community property right to plan benefits.

Kerbow has lost its persuasiveness, however, because its reasoning has been undermined by the Supreme Court's subsequent decision in *Campa.* We thus find merit in the district court's reasoning in the instant case; if ERISA permits the transfer of an employee's pension benefit rights to his ex-spouse pursuant to state community property law, then it

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[2] Section 3(7) states:

(7) The term "participant" means any employee or former employee of an employer, or organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

impliedly authorizes an ex-spouse to enforce these rights against the pension plan in federal court. *See Stone v. Stone, supra,* 450 F.Supp. at 921, 933 n.17.

The main stumbling block to accepting the reasoning of the district court is its interpretation of "participant" to mean something other than what the plain words of the statute generally convey. The Supreme Court's summary action in *Campa* sheds some light on this issue, however, and supports the district court's conclusion. *Campa* involved three consolidated appeals. One of these, *Bryant v. Carpenters Pension Trust Fund* (*Bryant*), arose under circumstances similar to those presented by the instant case and *Kerbow.* After the conclusion of the Bryants' dissolution proceeding, Mrs. Bryant sued her former husband and his pension plan for a declaratory judgment establishing her community property share of her husband's pension benefits. The superior court found in favor of Mrs. Bryant, and the California Court of Appeal affirmed. *In re Marriage of Campa,* 89 Cal.App.3d 113, 152 Cal.Rptr. 362 (1979). In dismissing the Campa appeal for want of a federal question, the United States Supreme Court necessarily determined that ERISA, including section 502(a)(1)(B), does not foreclose suits in state courts against ERISA-regulated pension plans by spouses seeking to enforce community property interests. At the very least, therefore, we must say that the word "participant," as used in section 502(a)(1)(B), does not exclude an ex-spouse such as Noel from state court. Hence, *Kerbow* was decided incorrectly. Furthermore, because an ex-spouse has a sufficient interest in enforcing ERISA pension rights to sue in state courts, and because federal courts have concurrent jurisdiction in such cases, ERISA §502(e)(1), 29 U.S.C. §1132(e)(1), we conclude that ERISA §§502(a)(1)(B) and 592(e)(1) form an adequate basis for a federal court to assume jurisdiction.

Because of the binding effect of and the necessary ultimate result of *Bryant,* and because of the fundamental soundness of the district judge's conclusion that ERISA would not permit an

employee to share a right through marriage yet deny the employee's ex-spouse a federal remedy, we accept the district court's conclusion that Noel qualifies as a "participant" under section 502(a)(1)(B).[3] Thus, Noel's suit against the Plan, if it had been originally filed in the federal court, would have been within the district court's original jurisdiction. The remand of Noel's state claim against Ward is unreviewable on appeal. 28 U.S.C. §1447(d).

AFFIRMED.

EUGENE A. WRIGHT, Circuit Judge, specially concurring:

> I concur, but I do not believe that the district court's jurisdiction rests solely on the fragile inference that ERISA authorizes this suit and grants this plaintiff a remedy. Even if plaintiff's remedy is provided by state law, the suit arises under an act of Congress regulating commerce and is removable on that basis. 28 U.S.C. §1337(a), 1441(a).[1]

A suit arises under an act of Congress regulating commerce if the complaint seeks a remedy granted or implied by the act "or . . . [if] the suit hinges on the interpretation of such an act." *Garrett v. Time—D.C., Inc.*, 502 F.2d 627, 629 (9th Cir. 1974) (citations omitted), *cert. denied*, 421 U.S. 913, 95 S.Ct. 1569, 43 L.Ed.2d 778 (1975). *See also Spokane County Legal Services, Inc. v. Legal Services Corp.*, 614 F.2d 662, 667 (9th Cir. 1980)(a suit arises under federal law when the complaint presents a

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[3] As we agree with the district court's conclusion that Noel was a "participant" in the pension plan, we need not consider counsel's argument that original jurisdiction also existed pursuant to section 301 of the Labor Management Relations Act, 29 U.S.C. 185.

[1] ERISA is an act of Congress regulating commerce within the meaning of §1337. *Leonardis v. Local 282 Pension Trust Fund*, 39 F.Supp. 554, 556 (E.D.N.Y. 1975).

substantial dispute over the construction or effect of federal law and the result turns on that dispute).[2]

The plaintiff claims to be directly entitled to benefits as a "participant" or derivatively entitled by virtue of a valid transfer.[3] Both theories of entitlement depend on propositions of federal law.[4] If she could not show that she was a participant within the meaning of ERISA, she would have to show that the transfer of benefits to her was not an "assignment or alienation" prohibited by ERISA to demonstrate that she was the "owner" of the benefits allegedly "converted." See ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1) (plan may not permit assignment or alienation of benefits).

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[2] Spokane County Legal Services involved general federal question jurisdiction under 28 U.S.C. §1331, but judicial interpretations of "arising under" are equally applicable to 1331 and 1337. *Garrett v. Time—D.C., Inc.* 502 F.2d 627, 629 (9th Cir. 1974), *cert. denied,* 421 U.S. 913, 95 S.Ct. 1569, 43 L.Ed.2d 778 (1975).

A suit may arise under federal law even though a federal remedy is not sought. *See, e.g., Gully v. First National Bank* 299 U.S. 109, 112, 57 S.Ct. 96, 97, 81 L.Ed. 70 (1936)(dictum); *Smith v. Kansas City Title & Trust Co.,* 255 U.S. 180, 199, 41 S.Ct. 243, 65 L.Ed. 577 (1921). "[F]ederal law creates primary relationships that have dimensions and applications beyond those points at which express remedies are provided." Note, *The Outer Limits of "Arising Under,"* 54 N.Y.U.L.Rev. 978, 1001, (1979). When the plaintiff's claim for a state remedy substantially relies on propositions about federally-governed relationships, and when the dispute over these propositions is likely to prove decisive, the suit arises under federal law. *Id.* at 979, 1004-06.

[3] The district court determined that the plaintiff's claim had these elements: "(1) that the employee spouse had a right under the terms of the plan to receive benefits; and (2) that his right was validly transferred to his spouse by the divorce decree." *Stone v. Stone,* 450 F.Supp. 919, 921 (N.D.Cal. 1978).

[4] The first theory undoubtedly relies on federal law, and this reliance alone is probably sufficient to give rise to federal jurisdiction. *See Bell v. Hood,* 327 U.S. 678, 681-83, 66 S.Ct. 773, 775, 90 L.Ed. 939 (1946) (substantial federal claim supports jurisdiction even if claim does not prevail on merits); *accord, Hagans v. Lavine,* 415 U.S. 528, 542, 94 S.Ct. 1372, 1381, 39 L.Ed.2d 577 (1974). In any event, the second theory also relies on federal law. Federal law is essential to both aspects of the claim.

Propositions about ERISA do not enter the case merely to negate the existence of a right based entirely on state law.[5] Instead, they are necessary ingredients of the plaintiff's asserted entitlement and form "direct and essential element[s] of the plaintiff's cause of action." *See Spokane County Legal Services,* 614 F.2d at 667 (quoting *Smith v. Grimm,* 534 F.2d 1346, 1350 (9th Cir.), *cert. denied,* 429 U.S. 980, 97 S.Ct. 493, 50 L.Ed.2d 589 (1976).

The district court therefore had jurisdiction whether the plaintiff is a "participant" or the transferee of a participant's rights.[6]

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law. Federal law is essential to both aspects of the claim.

[5] *Cf. Louisville & N.R.R. v. Motley,* 211 U.S. 149, 150, 152, S.Ct. 42, 43, 53, L.Ed. 126 (1908) (plaintiffs asserted contractural right based solely on state law).

The district court apparently thought that, if the plaintiff was not deemed a "participant," her claims would not arise under federal law because her "right to acquire an interest in her spouse's benefits is created solely by state law, as are all spousal rights. . . . That ERISA permits states to create a cause of action for benefits does not mean that the cause of action arises under federal law." *Stone v. Stone,* 450 F.Supp. 919, 922-23 (N.D.Cal. 1978) (citing *Gully v. First National Bank,* 299 U.S. 109, 116, 57 S.Ct. 96, 99, 81 L.Ed. 70 (1936).

The federal issues, however, include not merely whether ERISA permits the state to create a cause of action but whether the asserted entitlement was based on a valid transfer of benefits under ERISA. The claim of a valid transfer is an element of the cause of action.

[6] The plaintiff also had standing whether or not she is a "participant."

Standing requires an adversary relationship between the parties. *Davis v. Passman,* 442 U.S.228, 239 n.18, 99 St.Ct. 2264, 2274 n.18, 60 L.Ed.2d 846 (1979). It does not presuppose success on the merits. *See id.*

The plaintiff undoubtedly satisfied the article III requirement of "injury in fact." *See 13* C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure,* § 3531 at 176 (1975) standing doctrine is ambiguous, the article III aspect "seems likely to extend only to the requirement that a litigant establish 'injury in fact' resulting from the challenged activity").

She also satisfied the prudential requirement of "some connection between the asserted injury in fact and the protective purpose of the statutory or constitutional provision invoked." *Id.* at 176 77.

Even if she is not a "participant," she is the former spouse of one and transferee of his rights. She alleges an injury directly related to the interests protected by ERISA and arguably among those interests.

APPENDIX B

United States Court of Appeals

NINTH CIRCUIT

No. 79-3032

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Plaintiff-Appellant,

v.

BRENDA ANN KRONSCHNABEL,

Defendant-Appellee.

Submitted July 23, 1980
Decided September 29, 1980
Rehearing Denied Nov. 24, 1980

Appeal from the United States District Court for the Central District of California.

Before WRIGHT, GOODWIN and WALLACE, Circuit Judges.

WALLACE, Circuit Judge:

Carpenters Pension Trust for Southern California (the Trust) brought an action for declaratory relief against Brenda Ann Kronschnabel (Brenda), contending that the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001 *et seq.*, prevented the state court from requiring direct payment to a non-participant of a pension plan. The Trust appeals from the district court's order dismissing its action. We affirm.

I

The Trust is an employee pension benefit plan governed by the provisions of ERISA. In 1964, Brenda married Daniel Kronschnabel (Daniel), who, during a portion of their marriage, participated in and earned the right to future retirement benefits from the Trust.

On March 9, 1977, the California Superior Court for Kern County entered a final judgment dissolving the Kronschnabels' marriage. Approving the terms of its interlocutory judgment issued on July 29, 1976, the superior court found that Daniel's pension rights were community property. Accordingly, it awarded Brenda a one-half interest, representing her community property share, in Daniel's pension rights in the Trust. The court further stated that it "reserve[d] and retain[ed] jurisdiction over the issue of the payment of the community property benefits in the Carpenters Pension Trust for Southern California" to both Brenda and Daniel. Although the court denied Brenda's motion to join the Trust as a party to the dissolution proceedings,[1] it held that service of a certified copy of its interlocutory decree upon the trust would place the Trust on notice of Brenda's interest in her husband's pension benefits. The parties before us apparently agreed that the effect of the state court's order is to require the Trust to pay directly to Brenda a one-half share of Daniel's monthly pension benefits as they become payable.

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[1] It is unclear why the superior court denied Brenda's motion to join the Trust. The motion was denied on September 15, 1976. Nine months earlier, the California Court of Appeal had ruled that existing California joinder rules permitted joinder of a pension plan to a dissolution action when it appeared that the marital community might have an interest in pension benefits. *In re Marriage of Sommers*, 53 Cal.App.3d 509, 126 Cal.Rptr. 220 (1975). Recently enacted provisions of the California Civil Code, effective January 1, 1978, have since established a special procedure for joinder of an employee benefit plan as a party to a dissolution action. *See* Cal.Civ.Code §§4351, 4363, 4363.1, 4363.2, 4363.3 (West Supp. 1979). Thus, California law now explicitly provides that employee benefit plans may be joined to dissolution actions.

The Trust brought the instant action in the district court pursuant to ERISA §502(a)(3)(B)(ii), 29 U.S.C. §1132-(a)(3)(B)(ii), which, in conjunction with §§502(e)(1), 29 U.S.C. § 1132(e)(1), permits a fiduciary of an ERISA-regulated employee benefit plan to sue in federal district court to enforce the provisions of the plan or ERISA. The Trust sought a judgment declaring that ERISA preempts a state-court dissolution order to the extent that it requires the trustee of a pension plan to pay a portion of a participant's[2] pension benefits directly to his or her divorced spouse. The district court held that ERISA preempts neither state community property laws nor state-court orders requiring an ERISA-regulated pension plan to pay to an ex-spouse a community property share in the employee spouse's pension benefits.

The Trust concedes that ERISA does not preempt California's treatment of ERISA pension rights that derive from employment during marriage as community property. Cf. *In re Marriage of Brown,* 15 Cal.3d 838, 126 Cal.Rptr. 633, 544 P.2d 561 (1976) (pension rights, even if not yet vested, are community property). The sole question before us, therefore, is whether a state court may require the trustees of an ERISA-regulated pension plan to pay some portion of pension payments directly to a participant's ex-spouse.

II

In *In re Marriage of Campa,* 89 Cal.App.3d 113, 152 Cal.Rptr. 362 (1979), *appeal dismissed,* 444 U.S. 1023, 100 S.Ct. 696, 62 L.Ed.2d 664 (1980), the California Court of Appeal held that ERISA does not preempt a state-court order in a

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[2] ERISA § 3(7), § 1002(7), U.S.C. § 1002(7), defines a "participant" as "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit."

dissolution action that requires the trustees of a pension plan to divide pension payments between the employee and his or her ex-spouse. The California Supreme Court denied the pension plan's petition for a hearing. 89 Cal.App.3d at 132, 152 Cal.Rptr. at 362. The plan appealed to the United States Supreme Court. On January 14, 1980, the Supreme Court dismissed the pension plan's appeal for want of a substantial federal question. 100 S.Ct. 696 (1980). Court's summary dismissal in *Campa* controls the instant case, and requires us to affirm.

A summary dismissal by the Supreme Court of an appeal from a state court for want of a substantial federal question, when the federal question is properly presented and within the Supreme Court's appellate jurisdiction under 28 U.S.C. §1257(2), operates as a decision on the merits. *Hicks v. Miranda,* 422 U.S. 332, 344, 95 S.Ct. 2281, 2289, 45 L.Ed.2d 223 (1975). *See also R. Stern & E. Gressman, Supreme Court Practice* 324 (5th ed. 1978); C. Wright, A. Miller, E. Cooper & E. Gressman, Federal Practice and Procedure: Jurisdiction §4014 at 638-39 (1977). The Court has further elaborated that:

> Summary affirmances and dismissals for want of a substantial federal question without doubt reject the specific challenges presented in the statement of jurisdiction and do leave undisturbed the judgment appealed from. They do prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions. . . . Summary actions, however, . . . should not be understood as breaking new ground but as applying principles established by prior decisions to the particular facts involved.

Mandel v. Bradley, 432 U.S. 173, 1976, 97 S.Ct. 2238, 2240, 53 L.Ed.2d 199 (1977)(per curiam). *See also Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 182-83, 99 S.Ct. 983, 989-990, 59 L.Ed.2d 230 (1979); *Washington v. Confederated Bands & Tribes of Yakima Indian Nation,* 439

U.S. 463, 476 n.20, 99 S.Ct. 740, 749 n.20, 58 L.Ed.2d 740 (1979); *Hawaiian Tel. Co. v. Hawaii,* 614 F.2d 1197, 1198 (9th Cir. 1980)(per curiam).

In applying the foregoing principles to the case before us, we must first examine the jurisdictional statements[3] in *Campa* and determine the precise questions presented in that appeal. The jurisdictional statement in *Campa* set forth the questions on appeal as follows:

1. Do the provisions of Title I of the Employee Retirement Income Security Act, commonly known as ERISA, supersede the provisions of the California community property law and implementing statutes and court rules insofar as they relate to an employee benefit plan covered by that Act?
2. Does a state court have jurisdiction to order the board of trustees of an employee pension benefit plan covered by ERISA to make benefit payments in violation of the provisions of the documents and instruments governing the plan?

Our examination of the opinion of the California Court of Appeal in *In re Marriage of Campa, supra,* convinces us that the jurisdictional statement's description of the questions on

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[3] Rule 13 of the Supreme Court Rules provides that an appellant must file with the court "a printed statement as to jurisdiction" in support of an appeal. Rule 15 sets forth the required contents of a jurisdictional statement. Among other things, the jurisdictional statement must indicate "[t]he questions presented by the appeal, expressed in the terms and circumstances of the case but without unnecessary detail." Sup.Ct.R. 15, subd. 1(c). Rule 15, subd. 1(c) further provides: "The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the jurisdictional statement or fairly comprised therein will be considered by the court." The Court in *Mandel v. Bradley,* 432 U.S. 173, 176, 97 S.Ct. 2238, 2240, 53 L.Ed.2d 199 (1977) (per curiam) and *Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U.S. 173, 182-83, 99 S.Ct. 983, 989-990, 59 L.Ed.2d 230 (1979), made it clear that the questions presented in the jurisdictional statement largely govern the precedential effect of a summary dismissal for want of a substantial federal question.

appeal was accurate. Thus, in dismissing the *Campa* appeal for want of a substantial federal question, the Supreme Court necessarily considered and rejected the argument that ERISA preempts a state-court order requiring the trustees of a pension plan to divide pension payments between the employee and his or her ex-spouse.

In a brief filed in *Stone v. Stone,* 632 F.2d 740 No. 78-2313 (9th Cir. Sept. 29, 1980), a case consolidated for purposes of briefing and argument with the one presently before us, the Trust contends that the Supreme Court's summary dismissal of the *Campa* appeal is not binding precedent. The Trust points out that on the same day that the court dismissed *Campa* it also denied certiorari *In re Marriage of Johnston,* 85 Cal.App.3d 900, 149 Cal.Rptr. 798 (1978), *cert. denied,* 444 U.S. 1035, 100 S.Ct. 709, 62 L.Ed.2d 672 (1980), which presented issues identical to those in *Campa,* and took summary action in *Johns v. Retirement Fund Trust,* 85 Cal.App.3d 511, 149 Cal.Rptr. 551 (1978), *appeal dismissed* and *cert. denied,* 444 U.S. 1028, 100 S.Ct. 696, 62 L.Ed.2d 664, 696 (1980). In *Johns,* the court both dismissed the appeal for want of jurisdiction, and, "[t]reating the papers whereon the appeal was taken as a petition for writ of certiorari," denied certiorari. The Solicitor General submitted an amicus curiae brief for the United States in both the *Johns* and *Johnston* cases. In this brief, the Solicitor General observed that both the case presently before us, and its companion *Stone v. Stone, supra,* were before this circuit. The Trust urges that the Supreme Court, having this information, postponed plenary consideration to await a decision by this court resolving the preemption issues. From this speculative premise the Trust argues that the Court did not actually reach the merits in *Campa,* and hence that *Campa* does not bind us here.

The flaw in the Trust's argument is that the Court has explicitly stated, in, *e.g., Hicks v. Miranda, supra,* 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223 and *Mandel v. Bradley, supra,*

432 U.S. 173, 97 S.Ct. 2238, 53 L.Ed.2d 199, that *all* dismissals of appeals from state court for want of a substantial federal question are decisions on the merits. While a summary disposition of a state-court appeal may have less precedential effect upon subsequent Supreme Court decisions than would an opinion issued after briefs and argument, see, *e.g., Edelman v. Jordan,* 415 U.S. 651, 671, 94 S.Ct. 1347, 1359, 39 L.Ed.2d 662 (1974); R. Stern & E. Gressman, Supreme Court Practice 327-30 (5th ed. 1978), a summary dismissal for want of a substantial federal question fully binds the lower courts. The *Campa* appeal definitively presented the question whether ERISA preempts state-court orders directing a pension plan to pay a community property share of a participant's monthly benefits to his or her ex-spouse. The Supreme Court has answered that question in the negative. We are not at liberty to disregard the Court's ruling.[4]

AFFIRMED.

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[4] Counsel for the Trust suggests that the Court's action in *Campa* should be read as a denial of certiorari, which has no precedential value, *see Hawaiian Tel. Co. v. Hawaii,* 614 F.2d 1197, 1198 (9th Cir. 1980) (per curiam), rather than as a dismissal of an appeal. Counsel urges that *Campa* did not uphold the validity of a state statute, *see* 28 U.S.C. §1257(2) (appellate jurisdiction of Supreme Court over state-court decisions), but instead involved the construction of a "title, right, privilege or immunity" available pursuant to the Constitution, laws, or treaties of the United States, 28 U.S.C. §1257(3) (certiorari jurisdiction over state-court decisions), and that the Supreme Court was therefore without appellate jurisdiction. We conclude that this argument is unpersuasive. We find it difficult to assume that the Court meant something other than what it specifically said. Further, that the Court dismissed the appeal appears clear from the jurisdictional statement in *Campa,* which made specific reference to the state statutes that authorize a California superior court to order a pension plan to make payments to an ex-spouse of a plan participant.

APPENDIX C

No. C-77-1124-CBR.

United States District Court,

N. D. California.

April 18, 1978.

NOEL ZEONA STONE,

Plaintiff,

v.

WARD HERBERT STONE, SEAFARERS INTERNATIONAL UNION, PACIFIC DISTRICT, PACIFIC MARITIME ASSOCIATION PENSION PLAN, DOES ONE THROUGH FIVE,

Defendants.

MEMORANDUM OF OPINION

RENFREW, District Judge.

The major issue in this lawsuit is whether the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001-1381, preempts California community property laws to the extent that they require employee benefit plans subject to ERISA to pay part of a participant's benefits to his[1] divorced spouse.

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[1] Throughout this opinion, the Court will generally use the masculine to refer to a partipant in a benefit plan and the feminine to refer to the spouse of a participant, because the participant in this case is the husband and the spouse the wife.

1. FACTUAL AND PROCEDURAL BACKGROUND

In 1973, plaintiff Noel Zeona Stone ("Noel") instituted divorce proceedings against her husband, defendant Ward Herbert Stone ("Ward"), in the California Superior Court for the County of Alameda in the Northern District of California. On September 25, 1974, the Superior Court entered an Interlocutory Judgment of Dissolution of Marriage, and that court entered a final judgment on October 17, 1974, dissolving the marriage and dividing the couple's community property according to the terms of the interlocutory decree. One community asset was a monthly pension of $425.00 which defendant Seafarers International Union, Pacific District—Pacific Maritime Association Pension Plan (the "Pension Plan") had paid Ward since 1970 when he retired from employment covered by the Plan.[2] Under the terms of the interlocutory and final divorce decree, the community property interest in these pension benefits was divided as follows:

> "The community property interest of the parties in the pension being received by the respondent is 80% and accordingly 40% of the pension is to be paid to the petitioner, which at the present rate of payment of $425.00 is to be $170.00 per month to the petitioner with the petitioner accepting the tax consequences of said payment."

Noel alleges that between the end of 1974 when she obtained her divorce and May 3, 1977, when she filed this action in the California Superior Court for the County of Alameda, Ward failed to comply with his obligations under the terms of the divorce decree. Until May 3, 1977, Noel made no effort to notify the Pension Plan of its alleged obligation to pay 40% of Ward's monthly pension directly to her, although she did try unsuccessfully to join the Pension Plan by moving in 1976 to

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[2] The parties have stipulated that the Pension Plan is maintained by employers engaged in commerce and by a labor organization representing employees engaged in commerce and is therefore covered by ERISA under §4(a), 29 U.S.C. §1003(a).

modify the final judgment. The Pension Plan first received written notification of Noel's claim against the Plan on May 9, 1977, when it received in the mail a copy of the summons and complaint in Noel's enforcement action in Superior Court.

On May 25, 1977, the Pension Plan filed a petition for removal of Noel's civil action from the Superior Court, together with a supporting bond. Noel has not moved to remand this action to state court.

At a status conference on July 28, 1977, Noel and the Pension Plan agreed to file cross-motions for summary judgment. Pursuant to that agreement, they entered into a stipulation concerning the material facts. After the parties briefed the issues, the Court heard oral argument on October 13, 1977, and took the motions under submission. On November 30, 1977, the Court sent a letter to counsel for Noel and the Pension Plan requesting them to address two additional issues: whether the division of Ward's and Noel's community property by the Superior Court became effective before or after January 1, 1975; and whether the divorce decree required the Pension Plan to pay directly to Noel her 40% share of the pension benefits. Both Noel and the Pension Plan have responded to this request.

On February 3, 1978, Noel filed a motion for default judgment against Ward after Ward failed to respond to summons mailed to his last known address and printed in a local newspaper of general circulation on six separate occasions.

Having considered the written and oral arguments of counsel, the Court grants Noel's motion for summary judgment against the Pension Plan. In addition, the Court remands Noel's action against Ward to the Superior Court for the County of Alameda.

II. JURISDICTION UNDER ERISA

This action was removed to this Court pursuant to 28 U.S.C. §1441(a), which authorizes the removal of "any civil action brought in a State court of which the district courts of the

United States have original jurisdiction."[3] This Court therefore has jurisdiction only if Noel could have brought suit in federal court to enforce her right under the terms of the divorce decree to part of the pension benefits. Although the parties have not addressed this issue, the Court has an independent duty to determine whether it has subject-matter jurisdiction. *Wong v. Bacon*, 445 F.Supp. 1177, 1182 (N.D.Cal.1977).

Intervention in divorce proceedings by federal courts involves them in state domestic relations law, an area traditionally and wisely left to state courts. See cases cited at pp. 924-925, *infra*. Exercise of federal jurisdiction over Noel's action against the Pension Plan is authorized by federal statute and creates none of the problems which this noninterventionist policy is designed to avoid.

The cause of action of a nonemployee spouse against a benefit plan for benefits awarded by a state court in a divorce action has two elements: (1) that the employee spouse had a right under the terms of the plan to receive benefits; and (2) that this was validly transferred to his spouse by the divorce decree. Proof of neither of these elements requires federal courts to intrude into state domestic relations law.

The first element of the nonemployee spouse's cause of action does not involve state domestic relations law at all. Under §502(a)(1)(B) of ERISA, 29 U.S.C. §1132(a)(1)(B), a participant of a pension plan[4] like Ward has a right to bring a

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[3] Section 1441(a) provides:

"Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

[4] Section 3(7), 29 U.S.C. §1002(7), defines a participant as "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." Throughout this Memorandum of Opinion, the Court uses this term in its technical meaning.

civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan. * * *." Section 502(e)(1), 29 U.S.C. §1132(e)(1), gives a participant the right to bring this action in federal courts, which have jurisdiction concurrent with state courts in §502(a)(1)(B) actions.[5] If a participant's cause of action under §502(a)(1)(B) is transferable to his spouse by operation of state community property laws (see n.17, *infra*), federal courts have original jurisdiction over §502(a)(1)(B) suits brought by nonemployee spouses who were awarded benefits in state divorce actions.

Only the second element of the nonemployee spouse's cause of action, proof of a completed transfer of her husband's rights against the benefit plan to her, has even the potential to involve federal courts in state domestic relations law. However, their actual involvement is in fact slight.

A nonemployee spouse with a present interest in benefits must be able to sue a benefit plan to enforce that interest. If she could not, she would have no remedy for any kind of wrongful failure by the plan to pay benefits to her. A plan's failure could be wrongful not only because of a good-faith but erroneous belief that ERISA preempts state community property laws (as in this case), but also because of a willful, intentional violation by the trustees of their fiduciary duties. In other words, the plan's failure to pay could have nothing to do with the claimant's status as a nonemployee spouse.

The nonemployee spouse's right to sue should not depend on the nature of the reason for the plan's failure to pay her. If the existence of a federal cause of action depended on the

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[5] Section 502(e)(1) provides:

"Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section."

defense, a federal court could not know whether it had jurisdiction until the plan answered the complaint, and the well-pleaded complaint rule, which makes federal jurisdiction depend on the complaint, was designed to avoid just this kind of uncertainty and confusion. See *Wong v. Bacon, supra,* 445 F.Supp. 1177; 13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure §3566 (1975) (hereinafter cited as Wright, Miller & Cooper). To deny a nonemployee spouse awarded benefits in a divorce action the right to sue under §502(a)(1)(b) leaves her dependent on the willingness of her spouse to sue the plan or its trustees on her behalf, which the spouse has little or no incentive to do.

The right of a nonemployee spouse with an interest in benefits to sue a benefit plan does not, however, give her a right to seek a division of community property in federal court whenever pension benefits allegedly constitute a community asset. Federal courts need not become involved in any prospective divisions of community property. That is, until the community property has been divided by court decree or by property settlement, the nonemployee spouse has no enforceable interest in benefits and no enforceable right against the plan. So long as the employee spouse shares equally the management and control of personal community property with his wife during their marriage, Cal.Civ. Code §5125, she has no separate or superior right to receive all or part of the benefits and no right to sue to enforce this undetermined and inchoate right.

Consequently, a federal court need not decide how community property should be divided under state domestic relations laws. It need decide only how such property has previously been divided by court order or property settlement. That determination involves state contract law more than state community property law because the interpretation of a divorce

decree as well as a property settlement depends on the intent of the parties. *In re Marriage of Verner,* 77 Cal.App.3d 718, 143 Cal.Rptr. 826, 830 (1978).[6]

Any suit by a nonemployee spouse to obtain management and control of a community asset would not arise under federal law, and federal courts would therefore lack subject-matter jurisdiction.[7] The nonemployee spouse's right to acquire an interest in her spouse's benefits is created solely by state law, as are all spousal rights. Even if ERISA preempts some of her spousal rights, it does not replace those rights with any federally created spousal rights. That ERISA permits states to create a cause of action for benefits does not mean that the cause of action arises under federal law. See *Gully v. First National Bank,* 299 U.S. 109, 116, 57 S.Ct. 96, 81 L.Ed. 70 (1936). Even if a preemption defense were valid, a federal court does not acquire jurisdiction over a state cause of action merely because the defendant might raise a federal defense. E.g., *Phillips Petroleum Co. v. Texaco, Inc.,* 416 U.S. 125, 127-128, 94 S.Ct.

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[6] Although the language of the interlocutory decree is ambiguous and although Noel's delay of more than two years after entry of the decree in notifying the Pension Plan of its obligation to her suggests that the decree required only that Ward pay part of his pension benefits to Noel as he received them, the court concludes that the decree transferred Ward's right to 40% of the pension benefits to Noel and that Noel could therefore enforce the obligation directly against the Pension Plan. When the state court transferred Ward's right to 40% of his pension benefits to Noel, it transferred as well Ward's federal cause of action to enforce that right. See n. 17, *infra.* Although joinder of the Pension Plan would have been possible, *In re Marriage of Sommers,* 53 Cal.App.3d 509, 126 Cal.Rptr. 220, 223 (1975), it was not necessary. Cal.Civ.Code §5106, which discharges plans from liability to pay the transferee of an interest in benefits until the plan receives written notice, clearly contemplates that a transfer can be effective without joining a plan in some litigation. Sending written notice to the pension plan is indeed preferable to joinder because it places less of a burden on the pension plan and protects the spouses to an equal degree.

[7] Because of the domestic relations exception, federal courts do not have jurisdiction over marital disputes by reason of diversity of citizenship. *Crouch v. Crouch,* 566 F.2d 486, 487 (5 Cir. 1978); *Buechold v. Ortiz,* 401 F.2d 371, 372 (9 Cir. 1968). If federal courts lack federal-question jurisdiction over such disputes, they lack all subject-matter jurisdiction.

1002, 39 L.Ed.2d 209 (1974); *Louisville & Nashville R.R. Co. v. Mottley,* 211 U.S. 149, 152, 29 S.Ct. 42, 53 L.Ed. 126 (1908); 13 Wright, Miller & Cooper, *supra,* §3566, at 435 n.9.

Nor can a defendant who has a federal defense to a state cause of action remove a lawsuit brought under state law in state court because only those cases that could be brought initially in federal court can be removed under 28 U.S.C. §1441(a). *Gully v. First National Bank, supra,* 299 U.S. at 116, 57 S.Ct. 96; *State of Washington v. American League of Professional Baseball Clubs,* 460 F.2d 654, 660 (9 Cir. 1972); *Wong v. Bacon, supra,* 445 F.Supp. at 1183; *Borzello v. Charles D. Sooy & C. Darrell Sooy,* 427 F.Supp. 332, 335 (N.D.Cal.1977); *State of New York v. Local 115 Joint Board, Nursing Home & Hospital Employees Division,* 412 F.Supp. 720, 723-724 (E.D.N.Y. 1976). A divorce action therefore cannot be removed by a benefit plan which is joined as a defendant because it possesses community property subject to the jurisdiction of the state court conducting the proceedings. *See In re Marriage of Sommers,* 53 Cal.App.3d 509, 126 Cal.Rptr. 220, 223 (1975)(joinder of benefit plans).

This case and *In re Marriage of Pardee,* 408 F.Supp. 666 (C.D.Cal.1976), are therefore consistent in their results. In *Pardee,* the court remanded a divorce action removed by a pension plan because the asserted federal claim was not separate and independent from the state action within the meaning of 28 U.S.C. §1441(c).[8] Insofar as *Pardee* holds that a federal claim is not removable under §1441 unless the claim is separate and independent from state claims joined with it, the Court respectfully declines to follow it. Unlike the court in *Pardee,* this Court finds it necessary to decide whether the nonemployee spouse has a claim against the Pension Plan upon

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[8] Section 1441(c) provides:

"Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction."

which relief may be granted under federal law. If the complaint states a federal cause of action, at least that claim is removable. Both the pendent jurisdiction doctrine and §1441(c) allow federal courts to remand to state courts state claims over which federal courts have no independent jurisdictional basis and which are joined with federal claims within federal court jurisdiction. See p. 933, *infra*. But federal courts lack discretion to remand to state courts federal claims properly before them because the federal claims happen to be joined with such state claims.

III. PREEMPTION BY ERISA

A state divorce decree requiring the Pension Plan to pay directly to Noel part of the pension benefits due to Ward under the terms of the plan may be invalid under federal law under either of two theories: (1) that the award of part of the benefits to a nonemployee spouse is an assignment or alienation of benefits prohibited by §206(d)(1) of ERISA, 29 U.S.C. §1056(d)(1); or (2) that California's community property laws relate to employee benefit plans within the meaning of §514(a) of ERISA, 29 U.S.C. 1144(a), and are therefore preempted.

A. *Conflict with §206(d)(1)*

A state law which conflicts with a federal law is invalid under the Supremacy Clause of the United States Constitution. The Pension Plan argues that an award of a community interest in pension benefits to a nonemployee spouse constitutes an assignment or alienation of benefits within the meaning of §206(d)(1) of ERISA and that such an award therefore conflicts with that section's prohibition of such assignments and alienations.[9]

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[9] Section 206(d) provides:

"(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

"(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or

(Footnote continued on following page)

A conflict between state and federal statutes exists "where the state 'law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz,* 312 U.S. 52, 67 [61 S.Ct. 399, 85 L.Ed. 581] (1941); *Jones v. Rath Packing Co.,* 430 U.S. 519, 526, 540-541 [97 S.Ct. 1305, 51 L.Ed.2d 604] (1977)." *Ray v. Atlantic Richfield Co.,* 435 U.S. 151, 158, 98 S.Ct. 988, 994, 55 L.Ed.2d 179 (1978). Courts try to give federal statutes interpretations consistent with state domestic relations policy. Because Congress generally drafts statutes in a way that avoids conflict with state domestic relations law, courts interpret them with the presumption that Congress did not intend to interfere with the operation of that body of state law. See *id.,* at 157, 98 S.Ct. 988, quoting *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S. Ct. 1146, 91 L.Ed. 1447 (1947), and citing *Jones v. Rath Packing Co.,* 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed. 2d 604 (1977). Both Congress and the courts recognize that "'the whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States.'" *Buechold v. Ortiz,* 401 F.2d 371, 372 (9 Cir. 1968), quoting Ohio ex rel *Popovici v. Agler,* 280 U.S. 379, 383, 50 S.Ct. 154, 74 L.Ed. 489 (1930). Congress does not infringe *sub silentio* "the power to make rules to

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(Footnote continued from preceding page)

alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 of Title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of Title 26."

Although under 29 U.S.C. §1061(b)(1) the anti-assignment provision need not be adopted prior to January 1, 1976, the pension plan must comply with the substance of the anti-assignment rule after the enactment date, September 2, 1974. H.Conf.Rep.No. 93-1280, 93d Cong., 2d Sess., 1974 U.S.Code Cong. & Adm.News 5038,5061, n.4. Since the transfer of the 40% interest in the pension benefits occurred after that date, the transfer is invalid if it conflicts with §206(d)(1)'s prohibition of assignments and alienations.

establish, protect, and strengthen family life [which] is committed by the Constitution of the United States * * * to the legislature of [each state]." *Labine v. Vincent,* 401 U.S. 532, 538, 91 S.Ct. 1017, 1021, 28 L.Ed. 2d 288 (1971).

The strength of this rule of statutory construction is demonstrated by the willingness of courts to infer exceptions from statutory rules in order to avoid conflicts with state domestic relations laws. Even before Congress made a statutory exception for spousal and child support obligations from the general rule that all claims against a debtor are dischargeable in bankruptcy, the Supreme Court inferred an exception. *Wetmore v. Markoe,* 196 U.S. 68, 77, 25 S.Ct. 172, 49 L.Ed. 390 (1904). Similarly, even when Congress gave federal employees extremely broad control over the benefits they earned, courts inferred exceptions for claims by non-employee spouses and dependents for child and spousal support. See cases cited in *Wissner v. Wissner,* 338 U.S. 655, 659, 70 S.Ct. 398, 94 L.Ed. 424 (1950) (National Service Life Insurance Act). The correctness of this heavy presumption that Congress does not interfere with the workings of state domestic relations law is illustrated by the eventual decision of Congress to create explicit exceptions in both these situations. See 11 U.S.C. §35(a)(7) (Bankruptcy Act); 42 U.S.C. §659(a) (benefits of federal employees).

This policy of federal noninterference with state domestic relations laws means that a federal court does not construe a federal statute to preempt one of those laws unless "positively required by direct enactment," *Wetmore v. Markoe, supra,* 196 U.S. at 77, 25 S.Ct. 172, or, in other words, " 'unless that was the clear and manifest purpose of Congress.' " *Ray v. Atlantic Richfield Co., supra,* 434 U.S. at 157, 98 S.Ct. at 994, quoting *Rice v. Santa Fe Elevator Corp., supra,* 331 U.S. at 230, 67 S.Ct. 1146. The relationship between §206(d)(1) and California community property law must be evaluted against this background.

Section 206(d)(1) prohibits most voluntary and involuntary transfers of benefits from the employee who has earned them in order to "ensure that the employee's accrued benefits are actually available for retirement purposes * * *." H.Rep.No. 93-807, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin.News, pp. 4670, 4734. In other words, §206(d)(1) generally requires the payment of benefits only to a participant in a pension plan or to a beneficiary designated by him or by the terms of the plan.[10] Application of the community property laws results in the payment of benefits to a third person who is neither a participant nor a beneficiary. In other contexts, Congress has treated the community property laws as effecting a seizure of benefits, see *Wissner v. Wissner, supra,* 338 U.S. at 659, 70 S.Ct. 398 (interpretation of provision exempting benefit payments from "attachment, levy, or seizure"), and for purposes of §206(d)(1), "a garnishment or levy is not to be considered a voluntary assignment." H.Conf.Rep. No. 93-1280, 93d Cong. 2d Sess., 1974 U.S. Code Cong. & Admin.News, pp. 5038, 5061. It is at least possible that Congress used the terms assignment and alienation in §206(d)(1) to include the transfer of benefits under community property laws, and the interests of the employee that §206(d)1) is designed to protect are implicated by recognizing a community property interest in pension benefits.

The possibility of a conflict between California community property law and §206(d)(1) therefore cannot be avoided by categorizing a community property interest as an ownership rather than a creditor interest. Provisions in state and federal statutes analogous to §206(d)(1) have been held not to defeat community property claims because a nonemployee spouse acquires an interest in community assets not as a creditor or

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[10] The definition of participant in 3(7) is set forth in note 4, *supra.* Section 3(8), 29 U.S.C. 1002(8), defines the term "beneficiary" as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." For the sake of simplicity, the Court assumes throughout the following discussion that pension benefits go to a participant rather than a beneficiary.

assignee but as an owner, and "[t]he recognition of an ownership claim cannot be described as the levy of execution, garnishment, attachment or assignment of property." *Phillipson v. Board of Administration,* 3 Cal.3d 32, 89 Cal.Rptr. 61, 68, 473 P.2d 765, 772 (1971) (award to nonemployee spouse of community property interest in matured rights to state pension does not constitute assignment, execution, garnishment, or attachment prohibited by state pension law); see *In re Marriage of Hisquierdo,* 19 Cal.3d 613, 139 Cal.Rptr. 590, 592 and n.2, 566 P.2d 224 (1977) (same principle applied to federal benefit statutes with creditor exemption provisions), petition for cert. filed, 434 U.S. 963, 98 S.Ct. 500, 54 L.Ed.2d 448 (1977). This mode of analysis focuses on whether the nonemployee spouse's claim is an ownership or creditor interest, but the characterization of the interest under state property law does not affect the degree of conflict with the purposes of the federal statute, which determines whether state law is preempted. If the characterization under state property law were dispositive, a spouse entitled to a fair and equitable share of marital property in a non-community property state (see p. 931, *infra*) could not collect benefits if the law of that state did not recognize a pre-existing ownership interest as California law does. The substance of the spousal claim to marital property conflicts no more or no less with §206(d)(1) because of the form in which it is asserted.

Section 206(d)(1) does not explicitly prohibit the transfer of pension benefits under state community property laws, and the plain meaning of the terms assignment or alienation does not include such a transfer. Nor does the legislative history of ERISA clarify this ambiguous language. H.Rep.No. 93-807, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin.News, pp. 4670, 4695, 4734; H.Conf.Rep.No. 93-1280, 93d Cong., 2d Sess., *id.,* at pp. 5038, 5061. The Court must therefore rely primarily on an analysis of policy considerations in interpreting §206(d)(1). See *Williams v. Dept. of Social & Health Services,* State of Washington, 529 F.2d 1264, 1271 (9 Cir. 1976). More

specifically, the Court must compare the interest in benefits which the nonemployee spouse has under the community property laws with the interest in benefits asserted by other claimants. If Congress could have had no discernible reason to treat those kinds of interests differently, its clear intent to prohibit the transfer of one kind of interest demonstrates its intent to prohibit the transfer of the other kind. If, on the other hand, the relative interests of husband and wife differ from the relative interests of participant and other claimants, no basis to infer a clear congressional intent to preempt community property laws exists.

The payment of benefits to a nonemployee spouse in satisfaction of her community property claim does not conflict with the purposes of §206(d)(1). Members of the families of employees are included in the class which ERISA protects. The basic purpose of ERISA is to protect the literally millions of people who depend on benefits from private pension plans for financial independence after retirement. H.Rep.No. 93-533, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin.News, pp. 4639, 4640-4641; S.Rep.No. 93-127, 93d Cong., 2d Sess., 1974 U.S. Code Cong. & Admin.News, pp. 4838, 4839-4840. Congress was concerned not only about the workers themselves whose employment entitles them to benefits. Congress was also concerned about the families of those workers who depend to the same degree on the actual availability of those benefits. It would be ironic indeed if a provision designed in part to ensure that an employee spouse would be able to meet his obligations to family after retirement were interpreted to permit him to evade them with impunity after divorce. Construing §206(d)(1) to prevent a nonemployee spouse from enforcing marital property obligations against an employee benefit plan covered by ERISA would frustrate rather than further the policies of that provision.

This factor distinguishes community property claims of nonemployee spouses from the claims of business creditors, who are not members of the family unit protected by ERISA.

In addition, nonemployee spouses are more likely to be dependent on their share of pension benefits than a business creditor with a variety of customers who own a variety of assets which can be used to satisfy their debts. The nonemployee spouse has a unique and protected interest in obtaining her fair share of pension benefits.

A second reason to conclude that ERISA treats community property interests differently from other claims against benefits is that the nonemployee spouse cannot minimize her losses if her husband fails to honor his obligations to her. The insulation by ERISA of a substantial community asset from her community property claims if the marriage ends in divorce should not lead the nonemployee spouse to anticipate (and perhaps precipitate) that event by limiting her contributions to the marital partnership. The right of an employee to collect a pension from a plan covered by ERISA should encourage, not discourage, a prospective spouse to marry him. Unfortunately, the refusal of spouses to honor their marital obligations after divorce is not an uncommon occurrence, and in cases where pension benefits are the primary or sole community asset, the nonemployee spouse gets none of her community property unless she can collect benefits directly from the pension plan."[11]

This unavoidable vulnerability of nonemployee spouses contrasts with the position of business creditors. Depriving business creditors of recourse against this kind of asset is fair, because they have "only themselves to blame for extending

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[11] Defendant contends that the divorce court could, in such case, order the employee spouse to pay his wife her share of the benefits as he received them and that this approach is consistent with its interpretation of ERISA. This approach assumes, however, that the benefits can be included in a valuation of the couple's community property, which would be improper if ERISA intends to give the employee spouse the entire value of his benefits. This approach is also ineffective in cases where the employee spouse fails to comply with his obligations and places himself beyond the reach of process—cases apparently somewhat analogous to this one. As the Pension Plan itself concedes, this alternative would "foreclose the simplest available method for ensuring compliance with the state court order."

credit to a person whose interest under the [benefit plan] had been put beyond their reach" without first ascertaining the extent and character of the debtor's resources. *United Mine Workers v. Boyle,* 418 F.Supp. 406, 411 (D.D.C. 1976) (analogous principle for spendthrift trusts), *aff'd.* 567 F.2d 112 (D.C. Cir. 1977), *cert. denied, sub non. Antal v. Boyle* U.S. , 98 S.Ct. 1589, 55 L.Ed.2d 808 (1978). The nonemployee spouse's need for recourse against pension benefits is therefore substantially stronger than the need of other creditors.

Balanced against the interest of the non-employee spouse in collecting pension benefits is the interest of the participant in keeping them all for himself, but his claim is not superior to his wife's. Although the employee spouse may have assumed the obligation to provide the money to support the couple, the nonfinancial contributions of a nonemployee spouse are no less essential or valuable to a marriage, and ERISA does not reject the basic premise of the community property laws that each partner in a marriage deserves an equal share of all marital assets because each made their acquisition possible. See pp. 930, 931, *infra.* The nonemployee spouse earned those pension benefits no less than her husband, and to allow the husband to keep them all would give him a windfall gain at the expense of his wife. The employee spouse may have to make sacrifices in order to honor his obligation to his wife under the community property laws, but Congress deferred to the decision of the states that this sacrifice is necessary and proper.

In some cases the award of community property to the nonemployee spouse goes far beyond the needs of reasonable support. In those cases, it is legitimate to ask "why the obligee spouse should be treated differently from other creditors of the husband as to that portion of the debt which goes beyond support." Branca, *Dischargeability of Financial Obligations in Divorce: the Support Obligation and the Division of Marital Property,* 9 Fam.L.Q. 405, 434 (1975). However, few couples accumulate so large an estate, and in those cases, the value of the property allocated to the employee spouse as well as the

nonemployee spouse would necessarily be substantial. An employee spouse in that situation depends on pension benfits for his own support after retirement to a limited degree at best. Most community property settlements do not make either spouse wealthy. A construction of §206(d)(1) which preempted community property laws would protect a small and relatively undeserving minority of employee spouses at the expense of a large and relatively deserving majority of nonemployee spouses.[12]

It is true that if a nonemployee spouse's interest in community assets is insufficient to support her after divorce, she is entitled to support payments out of the separate property of her husband. See, e.g., Cal.Civ.Code 4801. The nonemployee spouse can satisfy her essential needs if she can enforce an order of spousal support directly against the pension fund. Congress and the courts have always preserved the enforceability of support obligations. See p. 924, *supra;* but see *Ogle v. Heim,* 69 Cal.2d 7, 69 Cal.Rptr. 579, 442 P.2d 659 (1968) (right to child support unenforceable against state pension plan); *Miller v. Superior Court,* 69 Cal.2d 14, 69 Cal.Rptr. 583, 442 P.2d 663 (1968) (right to alimony unenforceable against state pension plan). ERISA certainly did not depart from this uniform pattern and preempt spousal support laws.

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[12] Even if ERISA prohibits a transfer of the benefits themselves to a nonemployee spouse, it may permit her to be compensated with community property of equal value to her community property interest in pension benefits provided that those other community assets have sufficient value. See *In re Marriage of Milhan,* 13 Cal.3d 129, 117 Cal.Rptr. 809, 528 P.2d 1145 (1974), cert. denied, 421 U.S. 976, 95 S.Ct. 1976, 44 L.Ed.2d 467 (1975) (National Service Life Insurance Act); Thiede, The Community Property Interest of the Non-Employee Spouse in Private Employee Retirement Benefits, 9 U.S.F. L.Rev. 635, 650 (1975). That approach, however, fails to protect the nonemployee spouse in the many cases where pension benefits constitute the major community asset, and it gives her protection only in those instances where she needs it the least because she is least dependent on her interest in those benefits.

Application of the *Milhan* approach is preferable where feasible because like ERISA, it furthers the employee spouse's interest in receiving the benefits himself. In fact, California courts do just that. *Phillipson v. Board of Administration, supra,* 89 Cal.Rptr. at 70, 473 P.2d 765.

However, neither ERISA nor the state spousal support laws are intended only to ensure that a nonemployee spouse will have minimal support necessary for survival. ERISA protects the interest in pension benefits even if the family unit will not be destitute without them. Furthermore, spousal support provides more than the basic, irreducible essentials of life. A divorced spouse is entitled to support sufficient to enable her to maintain the life style which she enjoyed before the divorce, *In re Marriage of Wright,* 60 Cal.App.3d 253, 131 Cal.Rptr. 870, 871 (1976) (support order reasonable in light of "the free-spending lifestyle to which the parties had been accustomed"); *In re Marriage of Siegel,* 26 Cal.App.3d 88, 102 Cal.Rptr. 613, 615-616 (1972); Cal.Civ.Code §4801(a)(7), and the style to which she is accustomed may be far more luxurious than the style to which she could become accustomed if required to do so. The distinction between support and property obligations has collapsed to the point that at least in Indiana, "alimony serves a dual purpose — a method to aid in the equitable distribution of property and a method to provide continued maintenance or support if deemed appropriate." *Nichols v. Hensler,* 528 F.2d 304, 308 (7 Cir. 1976), quoting *Wellington v. Wellington,* 158 Ind.App. 649, 304 N.E 2d 347, 353 (1974).

There is a continuum between property and support obligations.[13] Even though it may be accurate as a broad generalization that nonemployee spouses have a greater need for support than for their share of community property, that fact does not mean that ERISA treats these two kinds of

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[13] Differences between the division of property and the payment of support of course remain. The categorization of the obligation affects its modifiability in light of changed circumstances and its enforceability through the sanction of contempt. See *Goggans v. Osborn,* 237 F.2d 186, 189, 16 Alaska 451 (9 Cir. 1956); but see *In re Marriage of Verner,* 77 Cal.App.3d 718, 143 Cal.Rptr. 826, 833-834 (1978) (contempt sanction for breach of property as well as support obligation) (dictum); *In re Marriage of Fithian,* 74 Cal.App.3d 397, 141 Cal.Rptr. 506, 510-511 (1977). Federal law recognizes certain differences in bankruptcy and tax proceedings. See 11 U.S.C. §35(a)(7); 26 U.S.C. §§71(a) and 215.

obligations differently. The question is whether the interest of the nonemployee spouse in a fair division of community property (even assuming that it is less than her interest in support) is greater than her husband's interest in keeping pension benefits for himself. For the reasons discussed at pp. 926-927, *supra,* the interest of the nonemployee spouse prevails.

This conclusion is sound despite the fact that some federal laws treat spouses asserting community property claims like business creditors and not like spouses asserting claims for support. Under the Bankruptcy Act, a bankrupt can have debts arising out of his community property obligations discharged even though spousal and child support obligations are nondischargeable. E.g., *Nichols v. Hensler, supra,* 528 F.2d at 307; *Jones v. Tyson,* 518 F.2d 678, 680 (9 Cir. 1975). More analogous to ERISA is the federal statute governing execution and garnishment of federal pension benefits. Although spouses and children can proceed against government benefit plans to enforce the legal obligations of government employees "to provide child support or make alimony payments," 42 U.S.C. §659(a), Congress specifically excepted payments "in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses." 42 U.S.C. §662(c), Tax Reduction and Simplification Act of 1977, Pub. L. 95-30, 501, 91 Stat. 126 (1977); see *Wissner v. Wissner, supra,* 338 U.S. at 659-660, 70 S. Ct. 398 (same result through judicial construction of National Service Life Insurance Act).

The Court cannot, however, determine whether the rationale of these statutes extends to private pension plans as well as federal governmental ones. Section 659 was a part of the Social Services Amendments of 1974 which included no provision defining its terms. Pub.L. 93-647, §101(a), 88 Stat. 2357 (1975). A rider which included §662(c) was added to the Tax Reduction and Simplification Act of 1977 on the floor of the Senate in order to fill that gap. Neither the committee reports of the 1975 legislation, S.Rep.No. 93-1356, 93d Cong., 2d Sess.,

1974 U.S. Code Cong. & Admin.News, pp. 8133, 8157; Conf.Rep.No. 93-1643, 93d Cong., 2d Sess., *id.*, p. at 8161; nor the committee reports of the 1977 legislation, Conf.Rep.No. 95-263, 95th Cong., 1st Sess., 1977 U.S. Code Cong. & Admin.News, pp. 185, 287; nor the sponsor of the provision which became §662(c), 123 Cong. Rec. S-6723 (remarks of Sen. Nunn) and S-6727 (explanation of provision) (April 29, 1977), explained why nonemployee spouses could not collect community property obligations from federal pension plans. ERISA exempts governmental plans from its coverage, §4(b)(1), 29 U.S.C. §1003(b)(1), and Congress might well be more reluctant to eliminate community property interests in private pension benefits than in governmental benefits. Private benefit plans cover more workers and pay more in benefits than governmental plans, so preemption of state community property laws with respect to private pension benefits would disrupt state marital property law to a much greater degree than preemption with respect to governmental benefits. Although 42 U.S.C. §659(a) and 662(c) and §206(d)(1) of ERISA could conceivably be read *in pari materia,* Congress' action in a related field is not a direct enactment which positively requires this interpretation of §206(d)(1) and which is essential to a finding of preemption in these circumstances.[14]

Even if it were theoretically desirable to except only support obligations and not community property obligations from the general rule against transferability of pension rights, the cost of implementing that rule is prohibitive. When couples get divorced, the division of property which they agree to or

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[14] *Wissner v. Wissner, supra,* 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 is not to the contrary. In *Wissner,* the Supreme Court concluded that California's community property law conflicted with a provision of the National Service Life Insurance Act that exempted payments of benefits from the claims of creditors and from legal and equitable process. *Wissner* involved a governmental benefit plan which involves different considerations than private plans. Perhaps more importantly, in the National Service Life Insurance Act, "Congress ha[d] spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." Id. at 658, 70 S.Ct. at 400. In ERISA, Congress made no similar expression of its intent.

which the divorce court imposes usually settles both the claims for support and the claims for community property. Although the distinction between support obligations and property division may be clear in theory, "[I]n practice the distinction between the two is often ignored by the courts and by the parties themselves." Branca, *Dischargeability of Financial Obligations in Divorce; the Support Obligation and the Division of Marital Property;* 9 Fam. L.Q. 405, 414 (1975). The imprecise and conflicting criteria for allocating portions of the property settlement between support and property division can be extremely difficult. *Id.,* at 413-431; *In re Smith,* 436 F. Supp. 469 (N.D. Ga. 1977). This allocation almost inevitably involves factual disputes and uncertainty, see *Nichols v. Hensler, supra,* 528 F.2d at 308-309 (allocation improper on summary judgment motion), so courts would have to take evidence concerning all the varied factors which determine the amount of a support award[15] in order to determine how much the nonemployee spouses needed and deserved for support. Not only does this kind of litigation place another burden on the already overburdened federal court system, but it drains the resources of the parties.

It would be possible to determine what portion of a property settlement is necessary for support and to permit the nonemployee spouse to collect only that portion from the pension plan. Courts can and do make that determination in

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[15] For example, Cal.Civil Code 4801(a) requires courts to consider the following circumstances in making an award of support:

"(1) The earning capacity and needs of each spouse.

"(2) The obligations and assets, including the separate property, of each.

"(3) The duration of the marriage.

"(4) The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse.

"(5) The time required for the supported spouse to acquire appropriate education, training and employment.

"(6) The age and health of the parties.

"(7) The standard of living of the parties.

"(8) Any other factors which it deems just and equitable."

connection with bankruptcy proceedings and in tax proceedings. See n.13, *supra*. But when only the respective interests of the employee and nonemployee spouse in pension benefits are involved, the benefits of that approach do not equal the costs. In this context, it is better to have an easily applied rule that achieves substantial justice between husband and wife than a complicated approach which consumes resources better used for other purposes and which results in an outcome not significantly, if at all, more equitable.

Any burden that compliance with state community property laws might place on benefit plans does not create a conflict with §206(d)(1) because that section does not protect any interest of plans as plans. Some anti-assignment statutes are designed "to prevent possible multiple payment of claims, to make unnecessary the investigation of alleged assignments, and to enable the [non-assigning party] to deal only with the [assigning party]." *United States v. Aetna Casualty & Surety Co.*, 338 U.S. 366, 373, 70 S.Ct. 207, 211, 94 L.Ed. 171 (1949) (statute prohibiting assignment of tort claims against U.S. does not prohibit assignments by operation of law). If Congress intended §206(d) to protect plans against these kinds of problems, it would not have permitted, as it did in §206(d)(2), even voluntary and revocable assignments of up to ten percent of any benefit payment. The Court found no indication in the legislative history of ERISA that the prohibition of certain types of transfers by §206(d) was designed to protect plans as well as participants and beneficiaries. In any case, the availability of interpleader under Fed.R.Civ.P. 22 enables plans to avoid the risk of double liability and exposure to substantial investigation and litigation expenses when each spouse claims or may claim a right to benefits under a judicial decree or a property settlement. Permitting the transfer of pension rights under state community property laws therefore interferes with no policy of §206(d)(1).

Community property laws are as integral a part of a state's domestic relations laws as its support laws, so the federal policy of noninterference with state domestic relations policy (see pp.

924-925, *supra*) applies to both kinds of laws. Although "the community property principle rests [in part on] the business relationship of man and wife for their mutual monetary profit, *Wissner v. Wissner, supra,* 338 U.S. at 660, 70 S.Ct. at 400, marriage is not primarily a profit-making undertaking in community property states, just as it is not in common law states. The community property laws incorporate and establish the moral obligations of husband and wife as much as their financial ones.

The common law limited the obligation of the wage-earning spouse to the duty of support. Johnston, *Sex and Property; The Common Law Tradition, the Law School Curriculum, and Developments Toward Equality,* 47 N.Y.U.L.Rev. 1033, 1036 (1972). That limited view of marital obligations has been increasingly rejected in favor of the concept that "marriage is a joint enterprise and shared undertaking, based on a division of labor, which should entitle each spouse to a share of the family assets upon divorce." Inker, Walsh & Perocchi, *Alimony and Assignment of Property; The New Statutory Scheme in Massachusetts,* 11 Fam.L.Q. 59, 61 & n.8 (1977). This premise that husband and wife contribute equally to the marital partnership, whether financially or otherwise, underlies the marital property laws not only of the eight community property states, see Prager, *The Persistence of Separate Property Concepts in California's Community Property System,* 1849-1975, 24 U.C.L.A.L.Rev. 1, 6-7 (1976), but also of the growing number of states (now at least thirty) which give each spouse the right to a fair and equitable share of marital property upon divorce. See Prager, *Sharing Principles and the Future of Marital Property Law,* 25 U.C.L.A.L.Rev. 1, 2-4, & nn. 10-13 (1977); Freed & Foster, *Divorce in the Fifty States; An Outline,* 11 Fam.L.Q. 297, 307-308 (1977); Foster & Freed, *Marital Property and the Chancellor's Foot,* 10 Fam.L.Q. 55, 58 & n.14 (1976). Only a dwindling minority of states adhere to the common law philosophy that the wage earner's obligation to his spouse is limited to the obligation of support

and that the spouse with legal title to marital property generally keeps it after divorce. *Id.*, at 57 & nn.9-12 and 58 & n.13; Freed & Foster, *Divorce in the Fifty States: An Outline,* 11 Fam.L.Q. 297, 307 (1977).

In ERISA, Congress did not adopt or reject either of these theories of community property. Congress presumptively takes a neutral position with respect to state community property laws, and only when those laws conflict with the policies of federal law does Congress preempt them. Preemption by ERISA of state community property laws would expose nonemployee spouses to the kind of risk from which ERISA is designed to protect the family unit and against which they cannot effectively protect themselves. Preemption would also cause a major change in the division of marital property which a large majority of states seek to achieve because pension benefits constitute a major asset of many marriages. Congress has not directly and clearly expressed its intent to cause these consequences, and neither the history nor the structure of ERISA compels that construction. The policy of §206(d)(1) does not conflict with the recognition of the community interest of the nonemployee spouse in pension benefits payable from employee benefit plans covered by ERISA.

B. *Preemption under §514(a)*

[3] Even if California's community property laws do not conflict with §206(d)(1), they are nevertheless preempted if they relate to employee benefits plans within the meaning of §514(a), which provides in relevant part that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA.[16] Federal legislation in a field may be so pervasive

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[16] Section 514(a) provides:

"Except as provided in subsection (b) of this section, the provisions of this subchapter concerning reporting, disclosure, vesting, funding and fiduciary duties and subchapter III of this chapter concerning plan termination

(Footnote continued on following page)

that it precludes any state regulation of the same field even though the state and federal laws do not directly conflict. See *Malone v. White Motor Corp.*, U.S. 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978).

Section 514(a) certainly was intended to have broad preemptive effect, and state laws which relate to employee benefit plans differently than ERISA relates to them are generally preempted. *Standard Oil Co. of California v. Agsalud,* 442 F.Supp. 695, 706-707 (N.D.Cal.1977). Section 514(a) was not, however, designed to preempt any state law with even the most tangential relation to ERISA. Cf. *Time Insurance Co. v. Depart. of Industry, Labor & Human Relations,* 46 U.S.L.W. 2369, 2370 (Wis.Cir.Ct. Jan. 3, 1978) (ERISA does not preempt state civil rights law applicable to benefit plans). The question is whether the California community property laws fall into this narrow category of laws which affect employee benefit plans but which do not relate to them within the meaning of §514(a).

Section 514(a) does not preempt community property laws. Congress used §206(d)(1) to prohibit transfers of interests in benefits to the degree that those transfers interfered

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(Footnote continued from preceding page)
insurance shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

The last sentence of the subsection provides that it "shall take effect on January 1, 1975." Conversely, that section "shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975." Section 514(b)(1). Although the transfer from Ward to Noel of a 40% interest in pension benefits occurred before that date, ERISA may still preempt Noel's state-created right to proceed against the Pension Plan. The Court assumes for purposes of this motion that Noel's cause of action against the Pension Plan arose after January 1, 1975, when Noel first notified the Plan of its obligation to her under the terms of the divorce decree. See Cal.Civ.Code 5106 (plan has no obligation to pay transferee of interest in benefits until receipt of written notice). The Court also assumes that the transfer of the pension benefits under the terms of the decree did not constitute an act within the meaning of §514(b)(1). See *Bacon v. Wong,* 445 F. Supp. 1189, 1192 (N.D.Cal.1978) (distinction in §514(b)(1) between causes of action arising and acts occurring before January 1, 1975).

with the policies of ERISA. If this specific provision permits such transfers under the community property laws, a general provision like §514(a) does not prohibit them. The same reasons that make transfers to nonemployee spouses different from transfers to business creditors (see pp. 926-927, *supra*) make community property laws different from other laws which relate to employee benefit plans. The presumption "that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress," *Ray v. Atlantic Richfield Co., supra,* 434 U.S. at 157, 98 S.Ct. at 994, quoting *Rice v. Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S. Ct. 1146, 9l L.Ed. 1447 (1947), applies to preemption by §514(a) just as it does to preemption by §206(d)(1). The Court cannot find in §514(a) the clear evidence of congressional intent to preempt state community property laws insofar as they relate to benefit plans that is necessary for a finding of preemption of state domestic relations laws.

This conclusion is consistent with *Standard Oil Co. of California v. Agsalud, supra,* 442 F.Supp. 695, where it was held that Hawaii's state health insurance law was preempted by ERISA. Regulation of benefit plans is an exercise of the police powers of states, but state regulation of benefit plans is not nearly as well established as state regulation of community property. To preclude state regulation of this latter area would involve a much more radical disturbance of the "federal-state balance," *Jones v. Rath Packing Co., supra,* 430 U.S. at 525, 97 S.Ct. 1305, quoting *United States v. Bass,* 404 U.S. 336, 349, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), than preclusion of state regulation of benefit plans. Accordingly, the presumption against preemption in the area of community property is correspondingly stronger.

A second basis for distinguishing *Standard Oil* involves the effect of preemption on individuals whom the state seeks to protect. Preemption of the Hawaii health insurance law does not prevent Hawaiian workers from bargaining for the benefits

which the state statute sought to guarantee. Although part of the reason for the statute may have been to ensure that workers with little bargaining power would obtain those benefits, the intended beneficiaries of the statute were not rendered incapable of achieving the protection. The intended beneficiaries of the California community property laws would be placed at a significantly greater disadvantage by preemption. Preemption would deprive nonemployee spouses of the share in marital assets which they indirectly helped to acquire, and it would leave them without effective remedies against their husbands, see nn. 11 and 12, *supra*. It is more reasonable to believe that Congress was willing to tolerate the adverse consequences of preemption of state health insurance laws than the consequences of preemption of state community property laws.

For these reasons, California's community property laws do not relate to employee benefit plans within the meaning of §514(a).[17]

IV. REMAND

In addition to her claim against the Pension Plan, Noel seeks relief from Ward. The Court lacks pendent jurisdiction over this state claim, and even if it had pendent jurisdiction, it would be an abuse of discretion to exercise it.

Under the pendent jurisdiction doctrine of *United Mine Workers v. Gibbs,* 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), a federal court has discretion to hear a state claim joined with a federal claim which shares a "common nucleus of

[17] ERISA does not preempt state community property laws to the extent they authorize the transfer to the nonemployee spouse of her spouse's federal cause of action under §502(a)(1)(B) as well as the transfer of the right to the benefits themselves. If ERISA permits the transfer of the latter, it permits the transfer of the former. If Congress intended to permit divorced nonemployee spouses to receive their community interest in benefits directly from employee benefit plans, it is reasonable to conclude that Congress intended to give them the means to obtain the benefits which belong to them.

operative fact." The Court of Appeals for this Circuit has consistently refused to allow the joinder of pendent parties as well as pendent claims. *Ayala v. United States,* 550 F.2d 1196, 1197-1198 (9 Cir.) (citing cases). cert. granted, 434 U.S. 1058, 98 S.Ct. 1227, 55 L.Ed.2d 758 (1977). Because Ward is not a party to Noel's federal cause of action against the Pension Plan, her claim against Ward cannot be joined with her claim against the Plan.

Even if the pendent jurisdiction doctrine permitted the joinder of new parties, joinder of Ward would be improper because the claim against Ward has no nucleus of operative facts in common with the claim against the Plan. The Plan's and Ward's obligations to Noel under the divorce decree are completely separate, and recovery from Ward does not involve at all the existence of the transfer of his pension rights to Noel. Exercise of jurisdiction over the claims against Ward would not significantly promote ecomony of judicial administration.

Section 1441(c) of Title 28 of the United States Code permits under some circumstances the removal of an otherwise non-removable claim that is joined with a separate and independent claim which is removable if sued upon alone.[18] Under its §1441(c) jurisdiction as well as its pendent jurisdiction, the Court has discretion to remand to state court state claims joined with federal ones. 14 Wright, Miller & Cooper, *supra,* §3724, at 651-654 (§1441(c) jurisdiction); 13 Wright, Miller & Cooper, *supra,* §3567, §3567, at 448-455 (pendent jurisdiction). Under the circumstances of this case, it is appropriate to remand Noel's claims against Ward to state court.

Because Noel's suit against Ward involves a different party and different issues than her suit against the Pension Plan, retention of jurisdiction over the state claim would conserve few if any judicial resources. See *supra.* Another reason to retain otherwise non-removable claims is to avoid deterrence of the exercise of the right to remove removable matters. 14 Wright, Miller & Cooper, *supra,* §3724, at 654. Where the removing defendant is not a party to the otherwise non-removable claims,

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[18] See note 8, *supra.*

remand of them will not deter the removing defendant from exercising this right because the burden of defending separate actions in state and federal court is not imposed on him.

Retention of jurisdiction over the state claim would also encroach on the authority allocated to state courts in the federal system. Even when a federal court hears the federal aspects of a domestic relations lawsuit, the aspects involving only state matters should be left to the state as a "matter of policy and comity. *Buechold v. Ortiz, supra,* 401 F.2d at 373; see *Overman v. United States,* 563 F.2d 1287, 1292 (8 Cir. 1977) (remand of state claims involving domestic relations after federal claims resolved). Moreover, retention of jurisdiction over state claims unrelated to Noel's federal claims would raise a serious constitutional question: "if the federal cases defining the pendent jurisdiction doctrine reflect the outer limits of permissible federal subject matter jurisdiction, then [28 U.S.C. §1441(c)] is unconstitutional if extended to" retention of a nonfederal claim in which diversity of citizenship is absent and which bears no relation to any federal question. Wright, Miller & Cooper, *supra,* 3724, 3724, at 649-650 & nn.74-79 (footnotes omitted). Remand of the claims against Ward enables the Court to avoid this question.

V. ORDER

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment against defendant Pension Plan is granted.

IT IS HEREBY FURTHER ORDERED that defendant Pension Plan's cross-motion for summary judgment is denied.

IT IS HEREBY FURTHER ORDERED that plaintiff's claims against defendant Ward Herbert Stone are remanded to the California Superior Court for the County of Alameda.

IT IS HEREBY FURTHER ORDERED that counsel for plaintiff shall prepare an appropriate form of judgment, obtain approval as to form from counsel for defendant Pension Plan, and submit it to the Court for execution within ten (10) days of the date of this Memorandum of Opinion.

APPENDIX D

Nos. CV 76-3593-WMB,
CV 76-3997-WMB.

United States District Court,

C. D. California.

Oct. 31, 1978.

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Plaintiff,

v.

BRENDA ANN KRONSCHNABEL, DANIEL JEROME KRONSCHNABEL, JOAQUIN ALONZO TIRRE, and GERALDINE LEE TIRRE,

Defendants.

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Plaintiff,

v.

BILL YACAWYCH and JULIE MARY YACAWYCH,

Defendants.

MEMORANDUM OPINION

WM. MATTHEW BYRNE, Jr., District Judge.

These two cases call for the resolution of the identical question of law involving federal pension regulations and the application of California community property law. Plaintiff,

Carpenters Pension Trust for Southern California, seeks to nullify two state court divorce decrees distributing pension benefits administered by it on the ground that federal regulation under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§1001 et seq. preempts such state action.

The factual settings giving rise to these actions are similar. Plaintiff in both cases is an employee pension benefit plan within the meaning of Section 3(a) of ERISA, 29 U.S.C. § 1002(2). Defendant in 76-3593-WMB, Brenda Ann Kronschnabel, married Daniel Jerome Kronschnabel in 1964. A final judgment of dissolution of their marriage was entered by the Kern County Superior Court on March 9, 1977. In 76-3997-WMB, a judgment of dissolution of the marriage of defendant Julie Mary Yacawych and Bill Yacawych was entered in the Los Angeles Superior Court on April 5, 1975.

Both Daniel Kronschnabel and Bill Yacawych were participants in the plaintiff's trust plan for a portion of the period during which they were married to the respective defendants.[1] Bill Yacawych is currently receiving pension benefits under the plan, and Daniel Kronschnabel will, in the future, be entitled to such benefits. In both cases, the courts found that the pension benefits were community property and granted to each spouse one-half of the community property value of the benefits in the trust. In the Kronschnabel dissolution judgment, the court stated that it "reserves and

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[1] Defendant Julie Mary Yacawych has urged that 29 U.S.C. §1144(a)(1976) is inapplicable to her case by virtue of §1144(b)(1), which bars the application of the preemption section to any cause of action arising before January 1, 1975, because divorce proceedings were commenced in Los Angeles Superior Court prior to that date. Defendant Brenda Ann Kronschnabel also claims that §1144(b)(1) applies to her case, on the ground that a major portion of her community property interest in the trust funds was acquired prior to January 1, 1975. Because the Court holds that §1144(a) does not preempt the state court dispositions of the community interests in the instant funds, it is unnecessary to pass on these contentions regarding §1144(b)(1).

retains jurisdiction over the issue of the payment of the community property benefits in the Carpenters Pension Trust for Southern California" to both Brenda and Daniel Kronschnabel.

Brenda Kronschnabel sought to have the Trust joined as a party claimant in the dissolution proceedings. The state court denied the motion but in its order noted:

> "[I]t would appear that service of written notice of the wife's interest in the pension, when paid, would be sufficient to place the trust on notice. Thereafter it would seem that payment without considering the divorced wife's interest would be at the trust's peril. This would also alleviate the 'intolerable burden' of monitoring the tangled marital affairs of potential pensions.
>
> It is the Court's opinion that service of a certified copy of the Interlocutory Decree would be sufficient notice."

Defendants contend that the service of the dissolution judgments places the Trust on notice of the community nature of the benefits. Therefore, the defendants assert that they will have a cause of action against the Trust if further payments are made only to the participating spouse.

Plaintiff brought these actions as a fiduciary under 29 U.S.C. §1132(a)(3)(B)(ii). It seeks a judgment declaring invalid those parts of the *Yacawych* and *Kronschnabel* judgments insofar as they purport to: (1) allocate interest and shares in future benefits payable under the plan to one other than the participating spouse; (2) reserve and retain jurisdiction over the issue of payment of the community property benefits in the Trust; and (3) have any binding or legal effect upon the Trust.

The Trust contends that the judgments of dissolution constitute state law and action which attempts to regulate an employee pension plan and is thus expressly prohibited by the preemption provision of ERISA, 29 U.S.C. §1144(a). The Trust further contends that to order benefit payments to one

other than the spouse who participated in the plan will impose an impermissible burden on the Trust which will affect all pension plan participants by increasing administrative costs, and thus reducing the total value of the trust fund.

In each case plaintiff has moved for summary judgment and defendant has filed a motion to dismiss. The parties have stipulated that there remain no genuine issues as to any material fact.

ERISA provides, with certain exceptions here inapplicable, that "the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in Section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975." 29 U.S.C. §1144(a).

"State laws" preempted by this section are defined in 29 U.S.C. §1144(c)(1) to include "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. . . ."

The term "State" is defined in 29 U.S.C. §1144(c)(2) as including "a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter."

The Supremacy Clause states that the Constitution and federal laws "made in Pursuance thereof . . .," and treaties "made, under the Authority of the United States, shall be the supreme Law of the Land . . ." U.S.Const. art. VI, cl. 2. The Clause establishes the essential tenet of federalism that state and local laws which impinge on an exclusive federal domain are not enforceable. This principle is referred to as the doctrine of preemption. See *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 98 S.Ct. 988, 55 L.Ed.2d 179 (1978); *Lockheed Air Terminal, Inc. v. City of Burbank*, 457 F.2d 667 (9th Cir. 1972). Whether the doctrine is applicable depends upon the intention and

purpose of Congress. Congress may either expressly or impliedly declare that state law is prohibited. Even if state action is not expressly or impliedly preempted by Congress, a state law is void to the extent it actually conflicts with a Congressional enactment. *Ray v. Atlantic Richfield, supra,* 98 S.Ct. at 994; *Malone v. White Motor Corp.,* 435 U.S. 497, 98 S.Ct. 1185, 1190, 55 L.Ed.2d 443 (1978). The preemption doctrine thereby ensures that matters of valid Congressional concern will be accorded national uniformity of treatment. See *Southern Pacific Co. v. Arizona,* 325 U.S. 761, 65 S.Ct. 1515, 89 L.Ed. 1915 (1945); *Mayo v. United States,* 319 U.S. 441, 63 S.Ct. 1137, 87 L.Ed. 1504 (1943).

The broad language of 29 U.S.C. §1144(a) reflects Congress's desire for national uniformity in the administration of employee pension funds.[2] Signed into law in 1974, ERISA sought to correct abuses in pension fund administration which had cast a cloud of uncertainty and insecurity over the retirement plans of many Americans. Among the more serious pre-ERISA problems were: inadequate participation; overly strict or deceptive vesting rules; insufficient funding; and inept or corrupt management of plan assets.[3]

Clearly Congress intended that ERISA would preempt "state laws" that purport to regulate the *administration* of pension plans. *See, e.g., Azzaro v. Harnett,* 414 F.Supp. 473 (S.D.N.Y. 1976). In contrast, "state laws," including dissolution judgments under a community property system, affecting *distribution* of vested pension benefits do not appear to be

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[2] Broad preemption would prevent conflicting regulations over interstate plans, avoid litigation that would result from piecemeal preemption, and serve the emerging federal interest in pension plans reflected in the authorization for research studies concerning further pension reform legislation. See 29 U.S.C. §1143 (1976); letter from James Hutchinson, Pension and Welfare Benefit Programs Administrator, Department of Labor, to William Barnes, California Corporations Commissioner, dated July 14, 1976, reprinted at 96 BNA Pension Rptr. R-1.

[3] See S.Rep. 93-127 93rd Cong., 1st Sees, 3-4 (1973), reprinted at U.S.Code Congressional and Adminsitrative News, 1974, p. 4838 (1973).

within the scope of the preemptive intent of the Act, nor at odds with the significant interest of achieving national uniformity in regulating employee retirement plans.

The court concludes that dissolution judgments disposing of pension benefits were not intended by Congress to be preempted. In 29 U.S.C. §1144(c)(2) "State" is defined as any State instrumentality which "purports to regulate, directly or indirectly, *the terms and conditions of employee benefit plans covered by this subchapter.*" (Emphasis added). The distribution by a dissolution decree of benefits earned by the community during coverture does not regulate even indirectly the "terms and conditions" of the instant trust plan. The phrase "terms and conditions" pertains to the plan's administration and operations, and does not relate to whether the participant's benefits are to be distributed as community or separate property.

With the exception of joint and survivor annuities, ERISA does not require a particular form of distribution of vested benefits, but merely provides that they be distributed on a timely basis.[4] Nor does the Act in any way determine the possible effects of a participant spouse's divorce. Plaintiffs contend that by adopting 29 U.S.C. §1055 regarding joint and survivor annuities Congress provided the sole rights which a non-participant spouse could have in plan benefits, and that therefore any state laws affecting these rights would be preempted.

There is no merit to this contention. Section 1055 merely requires that if a plan provides for benefits paid as annuities the plan must also provide for payment of benefits in the form of joint and survivor annuities. It creates no vested rights for a nonparticipating spouse and merely is elective for the participant, who in fact must be given the right to reject such a form of payment, 29 U.S.C. §1055(e). As such it tells us nothing about Congress's intent regarding the rights of a nonparticipant spouse or its intention to preempt state community laws. This

[4] 29 U.S.C. § 1056(a) (1976).

court should not read into the provision that which is not there.[5] As the court in *In re Marriage of Pardee*, 408 F.Supp. 666, 669 n.5 (C.D.Cal. 1976), noted when faced with the same argument as advanced here: "The trust divines an intention from this section [1055(a)] (which appears merely to attempt to provide protection for surviving spouses) to invalidate community laws. If that was the intention, Congress surely selected an indirect and cryptic method of expressing its views."

In addition, plaintiff contends that the operation of California's community property laws, as reflected in the dissolution judgments herein, conflict with certain ERISA provisions and impermissibly inject diversity into what is meant to be a uniform set of rules with regard to pension benefit payments. Specifically, plaintiff urges that state court dissolution judgments, allocating pension benefits pursuant to state community property laws, operate as an assignment and thus conflict with 29 U.S.C. §1056(d)(1) which provides: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated."

The statutory context suggests that the antiassignment proscription of Section §1056(d)(1) was aimed at preventing employees from assigning away their future income security for short-range benefits, thereby neutralizing ERISA's whole arsenal of provisions designed to safeguard pension funds. Community property laws do not act as an assignment but rather prescribe property rights in pension benefits as between spouses. Clearly, Section §1056(d)(1) cannot be read to outlaw as prohibited assignments dissolution decrees issued pursuant to the state's community property laws. *See In re Marriage of Pardee, supra,* 408 F.Supp. at 668 n.5. And *see Phillipson v. Board of Administration, Public Employees' Retirement System,* 3 Cal.3d 32, 43 89 Cal.Rptr. 61, 68, 473 P.2d 765 (1970).

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[5] See Reppy, "Community and Separate Interests in Pensions and Social Security Benefits after Marriage of Brown and ERISA," 25 U.C. L.A. L.Rev. 417, 519-23 (1978).

Furthermore, the plaintiff has failed to point to any part of the legislative history of ERISA evidencing a congressional intent to preempt state application of community property laws to the payment of pension benefits. Rather, that history "suggests that the congressional interest in uniformity was confined to matters involving the minimum standards of pension plans and the safeguards necessary to secure equitable administration. In 1974 U.S. Code Congressional and Administrative News, 4639 et seq. An intent to regulate pension plans does not necessarily include an intent to control the state's distribution of family assets in divorce and separation proceeding." *In re Marriage of Pardee,* 408 F.Supp. at 669 n.4.[6]

The cases relied upon by plaintiff where the United States Supreme Court discerned a Congressional intent to preempt state community property laws, unlike this case, involved payments made directly by the government to participants whose discretion to select beneficiaries was a signal feature of the legislation.

In *Free v. Bland,* 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed.2d 180 (1962), the United States Supreme Court held that Texas's community property laws were preempted by federal law granting absolute ownership to a surviving co-owner/spouse of a United States Savings Bond. The Court found that the survivor's right of absolute ownership was an important inducement to the sales of savings bonds and stressed the role such sales played in the management of the federal debt.[7] In this case, the court can sense no such similar compelling purpose to be served by preempting the operation of California's community property laws.

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[6] The character of a non-employee spouse's interest in pension benefits differs considerably from the interest asserted by other claimants to the benefits, such as business creditors. See *Stone v. Stone,* 450 F.Supp. 919, 926-28 (N.D. Cal.1978).

[7] "If the State can frustrate the parties' attempt to use the bonds' survivorship provision through the simple expedient of requiring the survivor to reimburse the estate of the deceased co-owner as matter of law, the State has interfered directly with a legitimate exercise of the power of the Federal Government to borrow money", 369 U.S. at 669, 82 S.Ct. at 1093.

In *Wissner v. Wissner*, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950), the Court allowed a serviceman to select the beneficiary of his own government life insurance policy regardless of state law. The imposition of California's community property laws in that case, the court concluded, "nullifies the soldier's choice and frustrates the deliberate purpose of Congress." *Id.* at 659, 70 S.Ct. at 400. Here, Congress's intention to preempt community property laws is far from deliberate; and the participant's "choice" is not involved here; the ex-husbands have not sought to invalidate the state court dissolution decrees, nor would they be freed from their duty of paying to their spouses their community share even if the Trust were relieved from the obligation of directly making the payments.

The administrative burdens and increased costs imposed on plaintiff by the allocation of benefits prescribed by the dissolution judgments are insufficient to preclude the application of California's community property laws to pension benefits. While no doubt the uniformity of standards and procedures provided by ERISA greatly benefit pension fund administration, the reduction of the administrator's duties was not the pre-eminent purpose of ERISA. Rather, the primary beneficiaries of ERISA were to be the participants themselves, and, indirectly, those who look to the participant for their support and security. Community property laws are consistent with this concept, for they seek to take account of the contributions of the nonworking spouse to the prosperity of the marriage partnership and invest that spouse with an equal right to succeed to the property of the community upon its dissolution.[8]

The field of domestic relations, including the dissolution of marriage and attendant division of property accumulated by the community, is "peculiarly suited to state regulation and control, and peculiarly unsuited to control by federal courts." *Buechold v. Ortiz*, 401 F.2d 371, 373 (9th Cir, 1968). See *Ex parte Burrus*, 136 U.S. 586, 10 S.Ct. 850, 34 L.Ed. 500 (1890).

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[8] *Contra, Francis v. United Technologies Corp.*, C77-1504 C.F.P. (N.D.Cal. Sept. 19, 1978).

The California Supreme Court recently affirmed its long standing recognition that pension rights attributable to the employment of one spouse during marriage are community property. See *In re Marriage of Brown,* 15 Cal.3d 838, 126 Cal.Rptr. 633, 544 P.2d 561 (1976). This established state policy of including pension benefits in the pool of community property generated by husband and wife during marriage should not be emasculated cavalierly by the court where neither the language of the federal statute, nor the underlying policies of preemption, require it.

For this court to prevent the California courts from effectuating the state's community property laws in the absence of a clear message from Congress would be to undermine the principles of federal-state comity from which the preemption doctrine draws its authority in the first instance.

Accordingly, judgment will be entered for the defendants in both actions dismissing plaintiffs' complaint.

APPENDIX E

(Order Filed November 24, 1980)

United States Court of Appeals

FOR THE NINTH CIRCUIT

NOEL ZEONA STONE, *Plaintiff-Appellee,* vs WARD HERBERT STONE, *Defendant,* and SEAFARERS INTERNATIONAL UNION, PACIFIC DISTRICT, PACIFIC MARITIME ASSOCIATION PENSION PLAN, *Defendant-Appellant,* and CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA, *Intervening-Appellant.*	**No. 78-2313** **D.C. No. C-77-1124 CBR** **ORDER**

Appeal from the United States District Court for the Northern District of California

Before: WRIGHT, GOODWIN and WALLACE, Circuit Judges.

The panel as constituted above has voted to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing en banc is rejected.

APPENDIX F

(Order Filed November 24, 1980)

United States Court of Appeals

FOR THE NINTH CIRCUIT

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA, *Plaintiff-Appellant,* vs BRENDA ANN KRONSCHNABEL, *Defendant-Appellee.*	No. 79-3032 D.C. No. CV 76-3593-WMB O R D E R

Appeal from the United States District Court for the Central District of California

Before: WRIGHT, GOODWIN and WALLACE, Circuit Judges.

The panel as constituted above has voted to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing en banc is rejected.

APPENDIX G

U.S. CONST., art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX H

26 U.S.C. §219, ERISA §2002, provides, in pertinent part:

RETIREMENT SAVINGS.

* * *

"(c) Definitions and Special Rules.—

* * *

"(2) Married Individuals.—The maximum deduction under subsection (b)(1) shall be computed separately for each individual, and this section shall be applied without regard to any community property laws."

* * *

26 U.S.C. §402(e), ERISA §2005, provides, in pertinent part:

(e) Tax on Lump Sum Distributions.—

* * *

(4) Definitions and special rules.—

* * *

(G) Community Property Laws.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

* * *

26 U.S.C. §408, ERISA §2002, provides, in pertinent part:

INDIVIDUAL RETIREMENT ACCOUNTS.

* * *

(d) Tax Treatment of Distributions.

* * *

(5) Transfer of Account Incident to Divorce—The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

* * *

(g) Community Property Laws.—This section shall be applied without regard to any community property laws.

APPENDIX I

29 U.S.C. §1002(7), ERISA §3(7):

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. §1002(8), ERISA §3(8):

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

29 U.S.C. §1055, ERISA §205:

Joint and Survivor Annuity Requirement

(a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c) (1) A plan described in subsection (b) of this section does not meet the requirements of subsection (a) of this section unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) of this section ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless , in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c) of this section) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e) of

this section, and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) For purposes of this section:

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c) of this section.

(i) This section shall apply if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

29 U.S.C. §1132, ERISA §502, provides, in pertinent part:

(a) A civil action may be brought—

(1) by a participant or beneficiary—

* * *

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

* * *

(3) by a participant, beneficiary, or fiduciary . . . (B) to obtain other appropriate equitable relief . . . (ii) to enforce any provisions of this title or the terms of the plan;

* * *

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

29 U.S.C. §1144, ERISA §514:

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) and not exempt under section 1003(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities.

(B) Neither an employee benefit plan described in section 1003(a), which is not exempt under section 1003(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a state.

(c) For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this title.

(d) Nothing in this title shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States (except as provided in sections 111 and 507(b) or any rule or regulation issued under any such law.

29 U.S.C. § 1222, ERISA § 3022:

(a) The Joint Pension Task Force shall, within 24 months after the date of enactment of this Act, make a full study and review of—

(1) the effect of the requirements of section 411 of title 26 and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 3021.

APPENDIX J

California Civil Code §5106. [*Payment or refund pursuant to employee benefit or savings plan: Discharge of adverse claims in absence of notice.*]

(a) Notwithstanding the provisions of Section 5105 and 5125, whenever payment or refund is made to a participant or his beneficiary or estate pursuant to a written employee benefit plan governed by the Employee Retirement Income Act of 1974 (P.L. 93-406), as amended, such payment or refund shall fully discharge the employer and any administrator, fiduciary or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the administrator of such plan has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof. Nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer and the fiduciary or insurance company making such payment or refund. The terms "participant," "beneficiary," "employee benefit plan," "employer," "fiduciary" and "administrator" shall have the same meaning as provided in Section 3 of the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended.

(b) Notwithstanding the provisions of Sections 5105 and 5125, whenever payment or refund is made to an employee, former employee or his beneficiary or estate pursuant to a written retirement, death or other employee benefit plan or savings plan, other than a plan governed by the Employee Retirement Income Security Act of 1974, (P.L. 93-406), as amended, such payment or refund shall fully discharge the employer and any trustee or insurance company making such payment or refund from all adverse claims thereto unless, before such payment or refund is made, the employer or former

employer has received at its principal place of business within this state, written notice by or on behalf of some other person that such other person claims to be entitled to such payment or refund or some part thereof. Nothing contained in this section shall affect any claim or right to any such payment or refund or part thereof as between all persons other than the employer and the trustee or insurance company making such payment or refund.

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